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West Virginia Department of Health and Human Resources | (PDF) – On June 1, 2015, the United States sent its findings to the state stating it violates the Americans with Disabilities Act and Olmstead v. L.C. by failing to deliver mental health services to children who rely on publicly funded care in the most integrated settings appropriate. Children in West Virginia experience high levels of institutionalization per capita and are unable to access mental health services in their homes and communities.

Maertz v. Minott - 1:13-cv-957-JMS-MJD (S.D. In. 2015) | (PDF) - On March 27, 2015, the United States filed a Statement of Interest in opposition to the State of Indiana's argument that serious risk of institutionalization or segregation is not a viable claim under the ADA. In *Maertz*, Plaintiffs with developmental disabilities provided evidence that the State of Indiana harmed their health by drastically reducing their home and community-based Medicaid services, placing them at serious risk of institutionalization.

Statement of Interest (Word) | (PDF) - filed March 27, 2015

Alabama Disabilities Advocacy Program v. SafetyNet Youthcare, Inc. – 2:13-cv-00519 – (S.D. Ala. 2014)
On October 14, 2014 the United States filed a Statement of Interest in *Alabama Disabilities Advocacy Program v. SafetyNet Youthcare, Inc.*, a case in which the defendant denied access to the local protection and advocacy organization. The Statement of Interest expresses the United States' view that facilities must permit access under the Protection and Advocacy for Individuals with Mental Illness Act to all residents regardless of whether the facility characterizes some residents as having a less serious mental health disorder than others.

Statement of Interest (Word) | (PDF) - filed October 14, 2014

Smith v. Department of Public Welfare of the Commonwealth of Pennsylvania – 2:13-cv-05670
On June 12, 2014, the United States filed a Statement of Interest in the case of *Smith v. Department of Public Welfare of the Commonwealth of Pennsylvania*. In *Smith*, the Plaintiffs alleged that the Commonwealth of Pennsylvania put them at serious risk of institutionalization by reducing funding for Act 150, a state-funded program providing attendant care services in the community. The Statement of Interest highlights the legal principles governing ADA claims, including the fact that individuals who are at risk of entering an institution because of a state policy need not wait until they enter the institution in order to assert an ADA integration claim. The Statement of Interest also addressed what constitutes a request for a reasonable accommodation for the purposes of bringing an ADA integration claim.

Statement of Interest (Word) | (PDF) – filed June 12, 2014

U.S. v. Rhode Island – 1:14-cv-00175 – (D.R.I. 2014)
On April 8, 2014, the United States entered into the nation's first statewide settlement agreement vindicating the civil rights of individuals with disabilitieswho are unnecessarily segregated in sheltered workshops and facility-based day programs. The settlement agreement with the State of Rhode Island resolves the Civil Rights Division's January 6, 2014 findings, as part of an ADA Olmstead investigation, that the State's day activity service system over-relies on segregated settings, including sheltered workshops and facility-based

day programs, to the exclusion of integrated alternatives, such as supported employment and integrated day services.

The settlement agreement provides relief to approximately 3,250 individuals with I/DD over ten years. Rhode Island will provide supported employment placements to approximately 2,000 individuals, including at least 700 people currently in sheltered workshops, at least 950 people currently in facility-based non-work programs, and approximately 300-350 students leaving high school. Individuals in these target populations will receive sufficient services to support a normative 40 hour work week, with the expectation that individuals will work, on average, in a supported employment job at competitive wages for at least 20 hours per week. In addition, the State will provide transition services to approximately 1,250 youth between the ages of 14 and 21, ensuring that transition-age youth have access to a wide array of transition, vocational rehabilitation, and supported employment services intended to lead to integrated employment outcomes after they leave secondary school. The U.S. District Court for the District of Rhode Island has entered the settlement agreement as a court-enforceable Consent Decree.

Consent Decree (Word) | (PDF) - filed April 8, 2014

Fact Sheet about Consent Decree (Word) | (PDF)

Order Approving Consent Decree (PDF) -- entered April 9, 2014

Complaint (Word) | (PDF) - filed April 8, 2014

Letter of Findings (Word) | (PDF) - filed January 6, 2014

Press Release on Landmark Settlement Agreement (HTML) - April 8, 2014

Remarks by Acting Assistant Attorney General Jocelyn Samuels at Press Conference Regarding Employment Services for Rhode Islanders with Disabilities (HTML) - April 8, 2014

Faces of Olmstead - read several individuals' stories

Related item: U.S. v. Rhode Island and City of Providence – 1:13-cv-00442 – (D.R.I. 2013)

U.S. v. Florida – 1:13-cv-61576 – (S.D. Fla. 2013)
On July 22, 2013, the United States filed a lawsuit against the State of Florida in federal district court to remedy ADA violations involving the State's failure to provide services and supports to children with disabilities in the most integrated setting appropriate to their needs. The lawsuit alleges that, as a result of the manner in which Florida administers its service system for children with significant medical needs, children with disabilities are unnecessarily segregated in nursing facilities when they could be served in their family homes or other community-based settings. The lawsuit further alleges that the State's policies and practices place other children with significant medical needs in the community at serious risk of institutionalization in nursing facilities. **On December 6, 2013, the Court consolidated this case with A.R. v. Dudek, No. 12-cv-60460 (S.D. Fla. 2012), a private lawsuit alleging that the State's policies and practices have caused children with disabilities to be unnecessarily placed in nursing facilities, or at risk of placement in nursing facilities.**

On March 31, 2014, the United States filed a statement of interest in opposition to the State's renewed motion to dismiss the private plaintiffs' Complaint. Previously, in June 2012 and April 2013, the Department filed two Statements of Interest in *T.H. v. Dudek*.

Statement of Interest (Word) | (PDF) – filed March 31, 2014

Complaint (Word) | (PDF) – filed July 22, 2013

Statement of Interest (Word) | (PDF) filed April 10, 2013

Letter of Findings (Word) | (PDF) - issued September 5, 2012

Statement of Interest (Word) | (PDF) filed June 28, 2012

Disability Rights Mississippi v. Mississippi Children's Home Services – 3:13-CV-547-HTW-LRA – (S.D. Miss. 2013)
On February 5, 2014 the United States filed a Statement of Interest in *Disability Rights Mississippi v.*

Mississippi Children's Home Services, a case in which the defendants have denied monitoring access to the local protection and advocacy organization. The Statement of Interest expresses the United States' view that regular monitoring visits, including unaccompanied access to residents of a facility, are a critical aspect of protection and advocacy organizations' work and are authorized by the Protection and Advocacy Acts.

Statement of Interest (Word) | (PDF) - filed February 5, 2014

Sciarrillo ex rel. St. Amand v. Christie – 2:13-cv-03478-SRC-CLW – (D.N.J. 2013)
On September 13, 2013, the United States filed a Statement of Interest in *Sciarrillo v. Christie*, a case in which private plaintiffs oppose the state's deinstitutionalization plan for its facilities housing people with developmental disabilities. The Statement of Interest expresses the United States' view that plaintiffs failed to assert a claim under the Americans with Disabilities Act.

In December 2013, the District Court of New Jersey dismissed the lawsuit in which private plaintiffs asked to stop the State from closing two developmental centers as part of the State's Olmstead plan. Plaintiffs had alleged that the State's efforts to deinstitutionalize and place residents in the community violated the Americans with Disabilities Act (ADA), the Rehabilitation Act (Rehab Act), the Social Security Act, and the Constitution's Due Process Clause. The United States filed a Statement of Interest arguing that the plaintiffs had failed to state claims under the ADA and Rehab Act. The court agreed, holding: "Plaintiffs' interpretation of *Olmstead* is untenable. Simply put, 'there is no basis [in *Olmstead*] for saying that a premature discharge into the community is an ADA discrimination based on disability.' Indeed, '[t]here is no ADA provision that providing community placement is a discrimination. It may be a bad medical decision, or poor policy, but it is not discrimination based on disability.' This Court will therefore join the numerous other federal courts have rejected similar 'obverse Olmstead' arguments in circumstances where a State has decided to close treatment facilities for the developmentally disabled or relocate such disabled individuals to community settings." *Id.* at *4 (internal citations omitted).

Statement of Interest (Word) | (PDF) - filed September 13, 2013

Troupe v. Barbour – 10-CV-00153 – (S.D. Miss. 2010)
The United States filed a Statement of Interest opposing Mississippi officials' Motion to Dismiss the complaint of Medicaid-eligible children with significant behavioral disorders who allege that the State of Mississippi fails to ensure that medically necessary services are provided to Medicaid-eligible children in the most integrated setting appropriate to their needs in violation of the ADA and the EPSDT provisions of the Medicaid Act.

The motion to dismiss was heard by a magistrate judge who ruled in favor of the State and recommended dismissal of the Medicaid EPSDT claim. The plaintiffs filed an objection with the District Court, and the United States filed another Statement of Interest. The State responded to plaintiffs' objection. The Objection is pending before the Court.

U.S. Statement of Interest to Clarify Meaning of EPSDT Statute (Word) | (PDF) - filed September 6, 2013

U.S. Statement of Interest in Opposition to the Defendants' Motion to Dismiss (Word) | (PDF) - filed April 8, 2011

Steward et. al. v. Perry et. al. – 5:10-CV-1025 – (W.D. Tex. 2010)
On August 19, 2013, the United States, private Plaintiffs and the State of Texas filed an Interim Settlement Agreement to enable Texans with intellectual and other developmental disabilities to live in the community rather than nursing facilities. The Interim Settlement Agreement is awaiting court approval.

The two-year Interim Agreement will serve at least 635 people with disabilities who are currently in nursing facilities or who are at serious risk of having to enter a nursing facility. The Interim Agreement calls for the State to begin expanding community alternatives to nursing facilities for persons with such disabilities, while the parties pause their ongoing litigation and negotiate a comprehensive settlement of all remaining issues in the case.

The Interim Agreement partially addresses the Civil Rights Division's finding that the State of Texas failed to serve individuals with intellectual and developmental disabilities in the most integrated setting appropriate to those individuals' needs, in violation of the Americans with Disabilities Act (ADA) and *Olmstead v. L.C.* In addition, the Interim Agreement pauses the ongoing litigation in *Steward v. Perry* under the ADA and *Olmstead*.

The Interim Agreement requires the State to expand community-based services through Medicaid waivers and individual supports for over 600 people with developmental disabilities who are unnecessarily living in nursing facilities or who are at risk of unnecessary institutionalization in nursing facilities. The Interim Agreement begins to offer the opportunity to live an integrated life to some of the thousands of people with developmental disabilities currently segregated in Texas's nursing facilities and ensures that they will receive specialized services while they are still in nursing facilities.

Under the Interim Agreement, the State will begin providing community-based case management, educational activities about community living options, transition planning for people who want to move to the community, and services and systems to transition people to the community and divert others from admission to nursing facilities.

The Interim Agreement will help the State focus its resources on safe, individualized, and cost-effective community-based services that promote integration and independence and enable individuals to live, work, and participate fully in community life.

Interim Settlement Agreement (Word) | (PDF) - filed August 19, 2013

Interim Settlement Agreement Fact Sheet (Word)

Supplemental Brief in Support of Plaintiffs' Amended Motion for Class Certification (Word) | (PDF) - filed November 12, 2012

Statement of Interest of the United States of America in Support of Plaintiffs' Amended Motion for Class Certification (Word) | (PDF) - filed September 10, 2012

United States Supplemental Statement of Interest in opposition to Defendants' Partial Motion to Dismiss Plaintiffs' Amended Complaint (Word) | (PDF) - filed November 30, 2011

United States' Reply in Support of Motion to Intervene in the Ongoing Lawsuit (Word) | (PDF) - filed August 4, 2011

Partial Consent Motion by the United States of America to Intervene and Memorandum in Support Thereof (Word) | (PDF) - filed June 22, 2011

Proposed U.S. Complaint in Intervention Alleging Violations of the ADA and Section 504 of the Rehabilitation Act (Word) | (PDF) - filed as an exhibit June 22, 2011

Statement of Interest of the United States Opposing the State's Motion to Dismiss (Word) | (PDF) - filed May 17, 2011

U.S. v. New York – 13-cv-4165 – (E.D.N.Y. 2013)
On July 23, 2013, the United States, individual plaintiffs, and the State of New York filed a settlement agreement in the U.S. District Court for the Eastern District of New York. The parties filed an amended settlement agreement on January 30, 2014, and the court approved the settlement agreement on March 17, 2014. The agreement remedies discrimination by the State in the administration of its mental health service system and ensures that individuals with mental illness who reside in 23 large adult homes in New York City receive services in the most integrated setting appropriate to their needs consistent with the ADA and Olmstead. Under the agreement, such individuals will have the opportunity to live and receive services in the community such that they are able to live, work, and participate fully in community life.

Amended Settlement Agreement (Word) | (PDF)- signed January 29, 2014

Settlement Agreement (Word) | (PDF) - filed July 23, 2013

Complaint (Word) | (PDF) - filed July 23, 2013

Press Release (HTML)

Fact Sheet about Agreement (Word)

Prior to the agreement, the parties litigated these issues in ***Disability Advocates v. Paterson***, in the District Court and in the U.S. Court of Appeals for the Second Circuit. In that case, following a trial on the merits, the U.S. District Court for the Eastern District of New York ruled that New York State officials and agencies

discriminated against thousands of people with mental illness by administering the State's mental health service system in a manner that segregated them in large, institutional adult homes and denied them the opportunity to receive services in the most integrated setting appropriate to their needs.

The DOJ intervened during the remedy phase of the case and participated in the appeal. On April 6, 2012, the Second Circuit vacated the remedial order and judgment of the District Court and dismissed the action for lack of jurisdiction.

U.S. Brief as Appellee (PDF) - filed October 6, 2010

Memorandum of Law in Support of Plaintiffs' Remedial Plan and in Opposition to Defendants' Proposed Remedial Plan (Word) | (PDF) - filed November 24, 2009

Thorpe et al. v. District of Columbia – 1:10-cv-02250-ESH – (D.D.C. 2010) (Formerly Day et al. v. District of Columbia)

The United States filed a Statement of Interest on June 26, 2013, supporting the Plaintiffs' Renewed Motion for Class Certification. The United States previously filed a Statement of Interest on October 3, 2011, opposing the Defendants' Motion to Dismiss or in the Alternative, for Summary Judgment. The pending lawsuit alleges that the District of Columbia violates the ADA and Section 504 of the Rehabilitation Act by unnecessarily segregating individuals with physical disabilities in nursing facilities.

Statement of Interest (Word) | (PDF) - filed June 26, 2013

Statement of Interest (Word) | (PDF) - filed October 3, 2011

U.S. v. Rhode Island and City of Providence – 1:13-cv-00442 – (D.R.I. 2013)

On June 13, 2013, the United States entered a court-enforceable interim settlement agreement with the State of Rhode Island and the City of Providence which resolved the Civil Rights Division's findings, as part of an ADA Olmstead investigation, that the State and City have unnecessarily segregated individuals with intellectual and developmental disabilities (I/DD) in a sheltered workshop and segregated day activity service program, and have placed public school students with I/DD at risk of unnecessary segregation in that same program. The first-of-its-kind agreement will provide relief to approximately 200 Rhode Islanders with I/DD who have received services from the segregated sheltered workshop and day activity service provider Training Thru Placement, Inc. (TTP), and the Harold A. Birch Vocational Program (Birch), a special education program which has run a segregated sheltered workshop inside a Providence high school.

Pursuant to the Interim Settlement Agreement, the State and City will give TTP and Birch service recipients the opportunity to receive integrated supported employment and integrated daytime services that will enable them to interact with the broader community to the fullest extent possible. The State will no longer provide services or funding for new participants at TTP's sheltered workshop and segregated day program, and the City will no longer provide services or funding to Birch's in-school sheltered workshop, which has served as a pipeline to TTP. Instead, over the next year, the State and City will provide adults at TTP and youth in transition from Birch with robust and person-centered career development planning, transitional services, supported employment placements, and integrated day services. The Interim Settlement Agreement calls for individuals to receive sufficient service to support a normative 40 hour work week, with the expectation that individuals will work, on average, in a supported employment job at competitive wages for at least 20 hours per week.

Interim Settlement Agreement (Word) | (PDF) - filed June 13, 2013

Interim Settlement Agreement Fact Sheet (Word) | PDF

Press Release: Department of Justice Reaches Landmark Settlement Agreement with Rhode Island and City of Providence Under the ADA (HTML)

Senior Counselor to the Assistant Attorney General for the Civil Rights Division Eve Hill Delivers Remarks on the Americans with Disabilities Act (HTML)

Complaint (Word) | (PDF) - filed June 13, 2013

Faces of Olmstead - Read several individuals' stories.

Related item: U.S. v. Rhode Island (2014)

U.S. v. Virginia – 3:12CV059 – (E.D. Va. 2012)
On January 26, 2012, the Division filed in District Court a Complaint and a simultaneous Settlement Agreement resolving its ADA Olmstead investigation into whether persons with intellectual and developmental disabilities in Virginia are being served in the most integrated settings appropriate to their needs.

The fundamental goals of the Agreement are to prevent the unnecessary institutionalization of individuals with developmental disabilities who are living in the community, including thousands of individuals on waitlists for community-based services, and ensure that people who are currently in institutions - at the Commonwealth's training centers or in other private but state-funded facilities - have a meaningful opportunity to receive services that meet their needs in the community.

Pursuant to the Agreement, the Commonwealth will create a total of approximately 4,200 home and community-based waivers for people who are on waitlists for community services and individuals transitioning from institutional settings over a ten year period. Almost 3,000 of these waivers will be targeted to individuals with intellectual disabilities on the waitlist or youth with intellectual disabilities in private facilities; another 450 waivers will be targeted to individuals with non-intellectual developmental disabilities on the waitlist or youth in private facilities; and another 800 waivers will be targeted to individuals choosing to leave the training centers. An additional 1,000 individuals on waitlists for community services will receive family supports to help provide care in their family home or their own home.

Under the Agreement, the Commonwealth will also create a comprehensive community crisis system with a full range of crisis services, including a hotline, mobile crisis teams, and crisis stabilization programs, to divert individuals from unnecessary institutionalization or other out-of-home placements. The Agreement requires the Commonwealth to develop and implement an "Employment First" policy to prioritize and expand meaningful work opportunities for individuals with developmental disabilities. In addition, the Agreement will create an $800,000 fund for housing assistance to facilitate opportunities for independent living for people with developmental disabilities. Finally, the Agreement requires the Commonwealth to create a strong and comprehensive quality and risk management system to ensure that community-based services are safe and effective.

The Agreement is court enforceable and will be monitored by an independent reviewer with the capacity to hire staff to assist in the implementation and to conduct compliance and incident reviews.

After taking public comment and holding a fairness hearing, the Court approved the settlement agreement subject to certain modifications, which were agreed to by the Commonwealth and the United States. The Court entered the settlement agreement as a final order on August 23, 2012.

On February 10, 2011, the United States issued a Findings Letter concluding that Virginia is in violation of the ADA integration mandate in the operation of its developmental disabilities services.

For more information about this case, visit the Special Litigation Section's website.

December 8, 2014 report of the independent reviewer | PDF

June 6, 2014 report of the independent reviewer | PDF

June 6, 2013 report of the independent reviewer

December 6, 2012 report of the independent reviewer

Order Approving Consent Decree (HTML) | (PDF) - entered August 23, 2012

Settlement Agreement as Final Order (Word) | (PDF) - entered August 23, 2012

Settlement Agreement (Word) | (PDF) - filed January 26, 2012

Settlement Agreement Fact Sheet (Word) | (PDF)

Complaint (Word) | (PDF) - filed January 26, 2012

Letter of Findings (Word) | (PDF) - filed February 10, 2011

Lane v. Kitzhaber – 12-CV-00138 – (D. Or. 2012)
On May 22, 2013, the Court granted the United States' March 27 Motion to Intervene in a pending class action lawsuit against the State of Oregon. The United States' accompanying Complaint in Intervention alleges violations of Title II of the ADA and Section 504 of the Rehabilitation Act for unnecessarily segregating individuals with intellectual and developmental disabilities in sheltered workshops when they could be served in integrated employment settings.

Prior to requesting intervention the United States filed on April 20, 2012, a Statement of Interest in Support of Plaintiffs Regarding Defendants' Motion to Dismiss. The United States argued that Title II and the integration regulation apply to all services, programs, and activities of a public entity, including segregated, non-residential employment settings such as sheltered workshops.

On June 18, 2012, the United States filed a second Statement of Interest in Support of Plaintiffs' Motion for Class Certification. In its Statement of Interest, the United States urged the Court to uphold class certification for a plaintiff class of thousands of individuals in, or referred to, Oregon sheltered workshops.

The United States also issued a Findings Letter in June 2012 concluding that Oregon is violating the ADA's integration mandate in its provision of employment and vocational services.

United States of America's Motion to Intervene (Word) | (PDF) - filed March 27, 2013

United States of America's Memorandum in Support of Its Motion to Intervene (Word) | (PDF) - filed March 27, 2013

Complaint in Intervention of the United States of America (Word) | (PDF) - filed March 27, 2013

DOJ Findings Letter to Oregon | (PDF) - filed June 29, 2012

Statement of Interest of the United States in Support of Plaintiffs' Motion for Class Certification (Word) | (PDF) - filed June 18, 2012

Statement of Interest (Word) | (PDF) - filed April 20, 2012

Carey et. al. v. Christie-1:12-cv-02522-RMB-AMD-(D.N.J. 2012).
On March 14, 2013, the United States filed a Notice of Interest in Carey v. Christie, a case brought by plaintiffs living in a state-operated institution for people with developmental disabilities, who claimed that the Americans with Disabilities Act should prevent the State from shutting this institution over their objections. The United States noted that the claims were not ripe for decision, and requested that if the Court addressed the ADA claims, that the United States have an opportunity to file a Statement of Interest to provide its interpretation of the ADA.

Notice of Interest (Word) | (PDF) filed March 14, 2013

United States v. Marion County Nursing Home District - (E.D. Mo. 2013)
On March 14, 2013, the parties in *United States v. Marion County Nursing Home District d/b/a Maple Lawn Nursing Home* filed a Settlement Agreement. The Agreement addresses whether residents of the nursing home are being served in the most integrated setting appropriate to their needs. The Agreement also addresses basic elements of residents' care and treatment. Maple Lawn is required to develop numerous improvement measures. An independent monitor has been selected to monitor the Settlement Agreement.

Settlement Agreement (Word) | (PDF) filed March 14, 2013

Complaint (Word) | (PDF)

Letter of Findings (Word) | (PDF)

ILADD v. DHS – 13-CV-01300 – (E.D. Ill. 2013)
On April 15, 2013, the United States filed a Statement of Interest in ILADD v. Quinn. Plaintiffs seek a preliminary injunction to stop the planned closure of two state-run centers for people with developmental disabilities. We argue that Title II of the Americans with Disabilities Act, the regulations, and the case law do not support the claim that the ADA gives persons in state-run centers a right to remain in those institutions and to stop the State's efforts to rebalance its service system toward community based care.

For more information about this case, visit the Special Litigation Section's website.

Statement of Interest (Word) | (PDF) filed April 15, 2013

Amanda D., et al. v. Hassan, et al.; United States v. New Hampshire, No. 1:12-CV-53 (SM)
On December 19, 2013, the Department, along with a coalition of private plaintiff organizations, entered into a comprehensive Settlement Agreement with the State of New Hampshire that will significantly expand and enhance mental health service capacity in integrated community settings over the next six years. The Agreement is a full consent decree entered by the U.S. District Court for the District of New Hampshire as a Court order on February 12, 2014. The Agreement also provides for regular compliance reviews and public reporting by an independent monitor."

The Agreement will enable a class of thousands of adults with serious mental illness to receive expanded and enhanced services in the community, which will foster their independence and enable them to participate more fully in community life. It will significantly reduce visits to hospital emergency rooms and will avoid unnecessary institutionalization at State mental health facilities, including New Hampshire Hospital (the State's only psychiatric hospital) and the Glencliff Home (a State-owned and –operated nursing facility for people with mental illness).

The Agreement requires the State, for the first time, to create mobile crisis teams in the most populated areas of the State and to create crisis apartments to help support team efforts at avoiding hospitalization or institutionalization. The Agreement also requires the State to make enhanced Assertive Community Treatment ("ACT") team services available statewide, such that the mental health system can provide ACT to at least 1,500 people at any given time. The Agreement requires the State to provide scattered-site, permanent, supported housing to hundreds of additional people throughout the state; the State will also create special residential community settings to address the needs of persons with complex health care issues who have had difficulty accessing sufficient community services in the past. The State will also deliver additional and enhanced supported employment services, consistent with the Dartmouth evidence-based model, to hundreds of new recipients throughout the state.

The Settlement Agreement resolves litigation that had been contested for well over a year. Private Plaintiffs filed the initial complaint in February 2012, and on April 4, 2012, the Court granted the Department's motion to intervene. On April 7, 2011, the United States had issued a Findings Letter concluding that the State of New Hampshire was failing to provide services to individuals with mental illness in the most integrated setting appropriate to their needs in violation of the ADA, which led to the needless and prolonged institutionalization of individuals with disabilities and placed individuals with disabilities at risk of unnecessary institutionalization. On September 17, 2013, after months of discovery and a hearing with oral argument, the Court certified a class of Plaintiffs consistent with parameters supported by Plaintiffs and the United States. Shortly thereafter, settlement talks resumed which produced the instant Agreement.

Order Approving Settlement Agreement (Word) | (PDF) - filed February 12, 2014

Settlement Agreement (Word) | (PDF) - filed December 19, 2013

Settlement Agreement Fact Sheet (Word) | (PDF)

United States' Reply to Defendants' Opposition to and in Support of Plaintiffs' Renewed motion for Class Certification (Word) | (PDF) - filed March 21, 2013

US Memorandum In Support of Plaintiffs' Motion for Class Certification (Word) | (PDF) - filed April 20, 2012

DOJ Findings Letter to New Hampshire (2011) (PDF) - filed April 7, 2011

U.S. Motion to Intervene (Word) | (PDF) - filed March 27, 2011

U.S. Memo in Support of Motion to Intervene (Word) | (PDF) - filed March 27, 2011

U.S. Proposed Order on Intervention (Word) | (PDF) - filed March 27, 2011

U.S.Proposed Complaint (Word) | (PDF) - filed March 27, 2011

Hunter v. Cook – 1:08-cv-02930-TWT – (N.D. Ga. 2013)
The United States filed a Statement of Interest in *Hunter v. Cook*, in opposition to the state of Georgia's argument that serious risk of institutionalization is not a viable claim under Title II of the ADA. The Plaintiffs' suit is a proposed class action under Title II of the ADA, the Medicaid Act, 42 U.S.C.§ 1396a *et seq.*, and the United States Constitution. Plaintiffs allege that the Defendant's administration of the Department of Community Health and the Medicaid program denies, limits, and reduces their nursing services in a manner that puts Plaintiffs at risk of unnecessary confinement or out of home care in violation of the ADA.

Statement of Interest of the United States Word | (PDF) - filed March 14, 2013

M.R. v. Dreyfus – 10-CV-2052 – (W.D. Wash. 2011)
In a suit brought on behalf of approximately 45,000 individuals with disabilities who receive personal care services through Washington State's Medicaid program, the United States filed a Statement of Interest in Support of Plaintiffs' Motion for Preliminary Injunction in January 2011, which the District Court denied in February 2011. On December 16, 2011, the Ninth Circuit Court of Appeals reversed the judgment of the district court and granted injunctive relief with respect to the named plaintiffs, finding that plaintiffs had demonstrated that the State's cuts placed them at serious risk of institutionalization in violation of the ADA. The court relied, in part, upon DOJ's previously filed Statement of Interest.

Letter from DOJ AAG Perez and HHS OCR Director Rodriguez to Governor Gregoire (Word) | (PDF) - October 22, 2012

Ninth Circuit Court of Appeals Order Granting Injunctive Relief as to Named Plaintiffs (Word) | (PDF) - filed December 16, 2011

U.S. Statement of Interest in Support of Plaintiffs' Motion for Preliminary Injunction (Word) | (PDF) - filed January 26, 2011

U.S. v. Delaware – 11-CV-591 – (D. Del. 2010)
On July 6, 2011 the Division filed in District Court a Complaint and a simultaneous Settlement Agreement resolving its ADA Olmstead investigation into whether persons with mental illness in Delaware are being served in the most integrated settings appropriate to their needs and its CRIPA investigation into conditions of confinement at Delaware Psychiatric Center.

The fundamental goals of the Agreement are: to ensure that people who are unnecessarily institutionalized, at the Delaware Psychiatric Center or other inpatient psychiatric facilities, can receive the treatment they need in the community; to ensure that when individuals go into mental health crisis, sufficient resources are available in the community so that they do not need to go unnecessarily to psychiatric hospitals or jails; and to ensure that people with mental illness who are living in the community are not forced to enter institutions because of the lack of stable housing and intensive treatment options in the community.

Pursuant to the Agreement, Delaware will create a comprehensive community crisis system to serve as the front door to the state's mental health system including a crisis hotline, mobile crisis teams able to reach someone anywhere in the state within one hour, 2 walk-in crisis centers, and short term crisis stabilization units. The agreement also commits the state to providing intensive community-based treatment through 11 Assertive Community Treatment (ACT) teams, 4 intensive case management teams, and 25 targeted case managers. The State will offer at least 650 housing vouchers or subsidies to allow people to obtain stable, integrated housing. Finally, the State will develop evidence-based supported employment services for 1100 people, rehabilitation services including substance abuse and educational services to 1100 people, and family and peer support services to 1000 people. The Agreement requires Delaware to establish a statewide quality management system reflecting qualitative and quantitative measures and provides for an independent monitor with capacity to hire staff to assist in the implementation and to conduct compliance reviews.

The United States issued a Findings Letter in November 2010 stating that Delaware is violating the ADA integration mandate in its provision of mental health services.

For more information about this case, visit the Special Litigation Section's website.

September 24, 2013 report of the independent reviewer (Word) | (PDF)

March 8, 2013 report of the independent reviewer

September 5, 2012 report of the independent reviewer

January 30, 2012 report of the independent reviewer

Order Entering Settlement Agreement - filed July 18, 2011

Settlement Agreement - filed July 6, 2011

Settlement Agreement Fact Sheet

Press Release

Letter of Findings (Word) | (PDF) - filed November 9, 2010

U.S. v. North Carolina – No. 5:12-cv-557 – (E.D.N.C. 2012)
On August 23, 2012, the United States entered a comprehensive, eight-year settlement agreement with the State of North Carolina resolving the Civil Rights Division's ADA Olmstead investigation of the State's mental health service system, which currently serves thousands of individuals with mental illness in large adult care homes. The Agreement will expand access to community-based supported housing – integrated housing that promotes inclusion and independence and enables individuals with mental illness to participate fully in community life.

Pursuant to the Agreement, the State will provide community-based supported housing to 3,000 individuals who currently reside in, or are at risk of entry into, adult care homes. A person-centered discharge planning process is designed to ensure individuals are able to transition successfully to community-based settings, while a pre-admission screening process will prevent more individuals from being unnecessarily institutionalized. The Agreement will also ensure that thousands of people with mental illness have access to critical community-based mental health services such as Assertive Community Treatment (ACT) teams, and will expand integrated employment opportunities for individuals with mental illness by providing supported employment services to 2,500 individuals. The Agreement also requires development of a crisis service system that offers timely and accessible services and supports in the least restrictive setting, including mobile crisis teams, walk-in crisis clinics, short-term community hospital beds, and 24/7 crisis hotlines.

The United States issued a Findings Letter in July 2011 concluding that North Carolina is violating the ADA's integration mandate in its provision of mental health services.

Settlement Agreement (Word) | (PDF) - filed August 23, 2012

Settlement Agreement Fact Sheet (Word) | (PDF)

Complaint (Word) | (PDF) - filed August 23, 2012

Letter of Findings (Word) | (PDF) - filed July 28, 2011

Benjamin v. Dept. Pub. Welfare – 1:09-cv-1182 (JEJ) – (M.D. Pa. 2009)
In July 2010, the United States filed an amicus curiae ("friend of the court") brief in this class action. We supported the arguments made by a class of individuals with developmental disabilities who sought to end their unjustified segregation in Pennsylvania's large, publicly-run congregate care institutions. In January 2011, the Court ruled in favor of the class members, finding that Defendants had violated Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12134, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, by unnecessarily institutionalizing the class members. Mem. & Order, Benjamin v. Department of Public Welfare, No. 09-cv-1182 (M.D. Pa. Jan. 27, 2011). The Court encouraged the parties to negotiate an agreement to remedy that violation. The parties submitted a settlement agreement for the Court's approval in May 2011. The Court held a fairness hearing to determine whether the agreement was fair, adequate, and reasonable. Following the hearing, in September 2011, the Court approved the agreement.

Since that time, representatives of a group of individuals who live in these state institutions and wish to remain there have appealed the Court's order approving the settlement agreement to the Third Circuit Court of Appeals. (Benjamin et al. v. Pennsylvania Department of Public Welfare, et al., Nos. 11-3684, 11-3685 (3d Cir.)). They argue that the relief given to the class members will hurt their ability to stay in the institutions. They also argue that the settlement agreement should not have been approved because it assumes that institutionalized individuals who are unable to express a preference regarding their placements can be

moved to community-based services if appropriate. The class members and Pennsylvania defendants together filed a brief opposing those arguments on April 3, 2012. Shortly thereafter, the United States filed an amicus curiae brief supporting the settlement agreement. We argued that the settlement agreement is fair and reasonable. We also explained that because federal law strongly favors the integration of individuals with disabilities into the community over segregation in large institutions, an institutionalized person who can live in the community but cannot express a preference regarding placement and has no guardian or involved family member, should be provided with community-based services.

In December 2012, the Third Circuit ruled that the group of individuals who wish to remain in the state's congregate care institutions has an interest in the settlement agreement and that those individuals were not adequately represented by any other party in the lawsuit. The Third Circuit therefore reversed the district court's order approving the settlement and sent the case back to the district court. The Third Circuit ruled that this time, the group of individuals must be permitted to participate in the remaining stages of the lawsuit. The case is now back before the district court.

For more information about this case, visit the Special Litigation Section's website.

Brief for the United States as Amicus Curiae in Support of Appellees and Urging Affirmance (Word) | (PDF) - filed April 5, 2012

U.S. Statement in Support of the Settlement Agreement (PDF) - filed August 2, 2011

U.S. Brief as Amicus Curiae in Support of Plaintiffs' Motion for Summary Judgment (PDF) - filed July 7, 2010

Darling v. Douglas – 09-CV-3798 – (N.D. Cal. 2009) (Formerly Cota v. Maxwell-Jolly)
The United States filed a Statement of Interest on July 12, 2011 and October 31, 2011 in support of Plaintiffs' challenge to the manner in which the State plans to eliminate the Adult Day Health Care (ADHC) service, which enables elderly individuals and individuals with physical and mental disabilities to live in the community and avoid hospitalization and institutionalization. The United States argued that the State's plan to eliminate ADHC without ensuring sufficient alternative services are available will place thousands of individuals who currently receive ADHC services at serious risk of institutionalization, in violation of the ADA. Approximately 35,000 Californians would be affected by the proposed ADHC elimination.

Previously, Plaintiffs successfully obtained two preliminary injunctions preventing the state from (1) reducing the maximum number of days of available ADHC services per week, and (2) implementing more restrictive eligibility criteria for the ADHC service. The State has appealed the second preliminary injunction halting the state's alterations to eligibility criteria, and the United States filed a brief supporting Plaintiffs-Appellees in June 2010. That appeal is currently pending before the Ninth Circuit.

On January 10, 2012, The United States filed comments supporting final approval of the parties' proposed Settlement Agreement. On January 24, 2012, the United States District Court for the Northern District of California granted final approval of the Settlement Agreement.

Comments of the United States in Support of Final Approval of the Proposed Settlement Agreement (Word) | (PDF) - filed January 10, 2012

Supplemental Statement of Interest in Support of Plaintiffs' Motion for Preliminary Injunction (Word) | (PDF) - filed October 31, 2011

U.S. Statement of Interest in Support of Plaintiffs' Motion for Preliminary Injunction (Word) | (PDF) - filed July 12, 2011

Brief of the United States as Amicus Curiae Supporting Plaintiffs-Appellees (PDF) - filed June 28, 2010

Oster v. Lightbourne – 09-CV-4668 – (N.D. Cal. 2009) (Formerly Oster v. Wagner)
The United States filed a Statement of Interest on January 9, 2012 regarding Plaintiffs' challenge to a twenty percent reduction in personal care services provided through the State's In-Home Support Services (IHSS) program. IHSS is designed to enable elderly individuals and individuals with disabilities to avoid hospitalization and institutionalization. On January 19, 2012, the United States District Court for the Northern District of California granted Plaintiffs' motion for preliminary injunction.

Previously, the Court preliminarily enjoined the State's planned implementation of more restrictive eligibility criteria for the IHSS program that would reduce or terminate IHSS services. The State has appealed the preliminary injunction, and the United States filed an amicus brief in the Ninth Circuit Court of Appeals supporting Plaintiffs-Appellees on March 2, 2010. That appeal is currently pending.

Statement of Interest (Word) | (PDF) - filed January 9, 2012

Brief of the United States as Amicus Curiae Supporting Plaintiffs-Appellees (Word) | (PDF) - filed March 2, 2010

DOJ Findings Letter to Mississippi
The United States issued a Findings Letter in December 2011 concluding that Mississippi is violating the ADA's integration mandate in its provision of services to people with developmental disabilities and mental illness. After an extensive investigation, the Department found the State of Mississippi has failed to meet its obligations under the ADA by unnecessarily institutionalizing persons with mental illness or DD in public and private facilities and failing to ensure that they are offered a meaningful opportunity to live in integrated community settings consistent with their needs. The Department recommended that the State implement certain remedial measures, including the development of adequate, safe community-based services for people with developmental disabilities or mental illness who are unnecessarily institutionalized, or at risk of unnecessary institutionalization. DOJ seeks to work with the State to negotiate a settlement to resolve the findings.

For more information about this case, visit the Special Litigation Section's website.

Letter of Findings (Word) | (PDF) - filed December 22, 2011

Katie A. v. Douglas – CV-02-05662 AHM (SHX) – (C.D. Cal. 2011) (Formerly Katie A. v. Bonta)
On November 18, 2011, Comments of the United States in Support of Final Approval of the Proposed Settlement Agreement were filed in support of the parties' agreement to the manner in which the State will provide an array of intensive, community-based mental health services to Medi-Cal eligible foster children or children at-risk of entry into the foster-care system. The United States argued that the parties' Settlement Agreement, agreed upon after nine years of litigation, was "fair and reasonable" and advances the important public interest of compliance with title II of the Americans with Disabilities Act and the Early and Periodic Screening, Diagnostic and Treatment ("EPSDT") provisions of the Medicaid Act.

Comments of the United States in Support of Final Approval of the Proposed Settlement Agreement (Word) | (PDF) - filed November 18, 2011

U.S. v. Arkansas – 4:09-CV-00033 – (E.D. Ark. 2009)
The United States filed a complaint on January 16, 2009, against the State of Arkansas and Arkansas officials alleging violations of the ADA, the U.S. Constitution, and the Individuals with Disabilities Education Act at the State's Conway Human Development Center for failing to provide services to facility residents in the most integrated setting appropriate to their needs; subjecting them to unconstitutional conditions; and depriving them of a free appropriate public education in the least restrictive environment.

On June 8, 2011, the U.S. District Court for the Eastern District of Arkansas dismissed the action with prejudice.

Findings of Fact and Conclusions of Law (PDF) - filed June 8, 2011

U.S. Post-Trial Brief (PDF) - filed February 10, 2011

U.S. Memorandum in Support of Motion for Summary Judgment (Word) | (PDF) - filed July 1, 2010, denied July 30, 2010)

U.S. Complaint Alleging Violations of the Americans with Disabilities Act, Constitution, and the Individuals with Disabilities Education Act (Word) (PDF) - filed January 16, 2009

Pitts v. Greenstein – 10-CV-635 – (M.D. La. 2010)
In September 2010, a group of four individuals with disabilities who receive and depend on Medicaid Personal Care Services (PCS) in order to remain in the community and to prevent hospitalization and institutionalization filed suit to prevent the State of Louisiana from reducing the maximum number of PCS

hours available each week. If the State moved forward with the reduction in services, the Plaintiffs argued, they and other individuals with disabilities would be placed at risk of institutionalization. In April 2011, the United States filed a brief supporting the Plaintiffs' argument that the cuts would place individuals with disabilities at risk of institutionalization and urging the Court to deny the State's Motion for Summary Judgment. In May 2011, the U.S. District Court for the Middle District of Louisiana denied the State's Motion for Summary Judgment. In June 2011, the Court granted the Plaintiffs' Motion to Certify a Statewide Class of Individuals affected by the reduction in PCS services.

At the urging of the Department of Justice, a Federal court denies the State of Louisiana's request to dismiss a lawsuit brought by individuals with disabilities affected by the State's reduction in personal care services.

U.S. Statement of Interest in Opposition to the Defendants' Motion for Summary Judgment (Word) (PDF) - filed April 7, 2011

Order Denying Motion for Summary Judgment (Word) | (PDF)

Hiltibran v. Levy – 10-CV-4185 – (W.D. Mo. 2010)
In a suit brought by individuals who need incontinence supplies to live in the community, the court issued an order on June 24, 2011 requiring the State of Missouri to provide Medicaid-funded incontinence supplies to individuals who need those supplies to prevent their placement in nursing facilities. The United States filed a Statement of Interest supporting Plaintiffs' Motion for Preliminary Injunction and Motion for Summary Judgment arguing that Missouri's policy not to provide the necessary supplies placed individuals at risk of institutionalization in violation of the ADA.

Court Order Granting Plaintiffs' Motion for Summary Judgment (Word) | (PDF) – filed April 4, 2011

U.S. Statement of Interest in Support of Plaintiffs' Motion for Summary Judgment (Word) | (PDF) – filed April 4, 2011

U.S. Statement of Interest in Support of Plaintiffs' Motion for Preliminary Injunction (Word) | (PDF) - filed October 15, 2010

John B. v. Emkes – 3-98-CV-0168 – (M.D. Tenn. 1998) (Formerly, John B. v. Goetz)
Following a remand from the Court of Appeals for the Sixth Circuit, the United States filed a Statement of Interest in support of a Consent Decree remedying alleged failures by Tennessee officials to provide adequate health services and treatment to thousands of Medicaid-eligible children in violation of the early and periodic screening, diagnostic and treatment (EPSDT) provisions of the Medicaid Act.

On March 1, 2011, the U.S. District Court for the Middle District of Tennessee entered preliminary findings, concluding that, because the EPSDT provisions of the Medicaid Act at issue in the case are privately enforceable and require States to provide services and treatment to Medicaid-eligible children, the majority of the Consent Decree should remain in effect.

U.S. Statement of Interest in Opposition to the Defendant's Motion to Vacate Consent Decree (Word) | (PDF) - filed February 18, 2011

Lee v. Dudek – 4:08-CV-26 – (N.D. Fla. 2008)
This class of plaintiffs—consisting of all Medicaid-eligible adults with disabilities who currently, or at any time during the litigation, are unnecessarily confined to a nursing facility and desire to and are capable of residing in the community—claims that the State of Florida's refusal to provide services in the community to these individuals violates the ADA's integration mandate.

The United States filed a Statement of Interest in opposition to the Defendants' Motion for Summary Judgment in December 2010. The Court denied the parties' motions for Summary Judgment on January 20, 2011, and the case proceeded to trial in Feburary 2011. The parties await the Court's ruling.

U.S. Statement of Interest in connection with the Parties' Cross Motions for Summary Judgment (Word) | (PDF) - filed December 20, 2010

Boyd v. Mullins – 2:10-CV-688 – (M.D. Ala. 2010)
Jonathon Paul Boyd, a 34-year-old with quadriplegia who is currently living in a nursing home but desires and is able to receive services in a more integrated setting, alleges that the State of Alabama violates Title II

of the ADA by administering its Medicaid program in a manner that causes Mr. Boyd to be unnecessarily institutionalized in a nursing facility.

The United States filed a Statement of Interest supporting Mr. Boyd's motion for preliminary injunctive relief, which the Court denied on November 12, 2010. (753 F. Supp. 2d 1163)

The case is ongoing.

U.S. Statement of Interest in Support of Plaintiff's Motion for Preliminary Injunction (Word) | (PDF) - filed October 12, 2010

Knipp v. Perdue – 10-CV-2850 – (N.D. Ga. 2010)
In October 2010, the United States filed a brief in support of Plaintiffs' challenge to the State's plan to eliminate services for individuals with mental illness without offering sufficient alternative support services that are necessary to prevent Plaintiffs' hospitalization and institutionalization.

The Court granted Plaintiffs' motion on October 7, 2010. The case is currently pending.

U.S. Statement of Interest in Support of Plaintiffs' Motion for Preliminary Injunction (Word) | (PDF) - filed October 6, 2010

U.S. v. Georgia – 10-CV-249 – (N.D. Ga. 2010)
On October 19, 2010, the DOJ entered into a comprehensive Settlement Agreement with the State of Georgia and Georgia officials, resolving the United States' complaint alleging that individuals with mental illness and developmental disabilities confined in State hospitals were unnecessarily institutionalized and subjected to unconstitutional harm to their lives, health, and safety in violation of the ADA and the U.S. Constitution.

The agreement requires Georgia to expand community services so that individuals with mental illness and developmental disabilities can receive supports in the most integrated setting appropriate to their needs. Specifically, for individuals with developmental disabilities, the agreement provides that Georgia will cease all admissions to the State-operated institutions; transition all individuals to the most integrated setting appropriate to their needs by July 1, 2015; create more than 1100 home and community-based waivers to serve individuals in the community; serve those receiving waivers in their own home or their family's home consistent with the individual's informed choice; and provide family supports, mobile crisis teams, and crisis respite homes.

For individuals with mental illness, the agreement provides that Georgia will serve in the community 9,000 individuals with serious and persistent mental illness who are currently served in State Hospitals; frequently readmitted to State Hospitals; frequently seen in emergency rooms; chronically homeless and/or being released from jails or prisons. Services will be provided through a combination of 22 Assertive Community Treatment teams, 8 Community Support teams, 14 Intensive Case Management teams, 45 Case Management service providers, 6 Crisis Services Centers, 3 additional Crisis Stabilization Programs, community-based psychiatric beds, mobile crisis teams, crisis apartments, a crisis hotline, supported housing, supported employment, and peer support services. The agreement also provides for a State-wide quality management system for community services and names Elizabeth Jones as the Independent Reviewer to assess the State's compliance with the agreement.

For more information about this case, visit the Special Litigation Section's website.

DOJ Letter Regarding Year Three Compliance (Word) | (PDF) - September 20, 2013

Third report of the independent reviewer - September 19, 2013

Second report of the independent reviewer - September 20, 2012

First report of the independent reviewer - October 5, 2011

U.S. v. Georgia Settlement Agreement Fact Sheet (Word) | (PDF) - October 19, 2010

Settlement Agreement (Word) | (PDF) - filed October 19, 2010

Order (Amending and Entering Settlement Agreement) (PDF) - filed October 29, 2010

Cruz v. Dudek – 1:10-CV-23048 – (S.D. Fla. 2010)
Luis Cruz and Nigel de la Torre successfully sought a preliminary injunction enjoining the State of Florida from denying them the home and community-based services available under its Traumatic Brain Injury/Spinal Cord Injury Medicaid Waiver.

The United States had filed a Statement of Interest in support of Cruz and de la Torre's motion for preliminary injunctive relief. On April 19, 2011, the Court granted the parties' joint motion to dismiss with prejudice.

Luis Cruz and Nigel de la Torre continue to receive home and community-based services under the State's Traumatic Brain Injury/Spinal Cord Injury Medicaid Waiver.

U.S. Statement of Interest in Support of Plaintiffs' Motion for Preliminary Injunction (Word) | (PDF) - filed September 13, 2010

Williams v. Quinn – 05-CV-4673 – (N.D. Ill. 2005)
On May 24, 2010, the Department filed comments in *Williams v. Quinn*, supporting a Settlement Agreement that would provide hundreds of individuals with mental illness the opportunity to move from institutions to community-based settings. On September 29, 2010, the Court gave final approval of the Settlement Agreement. (748 F. Supp.2d 892)

Comments by the United States in Support of Final Approval of the Parties' Proposed Consent Decree (Word) | (PDF) - filed September 10, 2010

Jones v. Arnold – 09-CV-1170 – (M.D. Fla. 2010)
Plaintiffs challenge the State's failure to fund appropriate Medicaid community services for individuals with spinal cord injury, which places Plaintiffs at risk of institutionalization in violation of Olmstead.

The United States moved to intervene in August 2010.

The case was voluntarily dismissed January 3, 2011.

U.S. Motion to Intervene (Word) | (PDF) - filed September 10, 2010

Napper v. County of Sacramento – 10-CV-01119 – (E.D. Cal. 2010)
Individuals with mental illness brought suit against the County of Sacramento for failing to provide adequate community-based services, which placed them at risk of institutionalization. In July 2010, the United States filed a Statement of Interest in support of Plaintiffs' Motion for Preliminary Injunction, requesting that the Court stop the County from moving forward with its plans to drastically change the mental health service system. The Court granted Plaintiffs' motion on July 27, 2010.

U.S. Statement of Interest in Support of Plaintiffs' Motion for Preliminary Injunction (Word) | (PDF) - filed July 19, 2010

Hampe v. Hamos – 10-CV-3121 – (N.D. Ill. 2010)
In July 2010, the United States filed a Statement of Interest in Support of Plaintiffs' Motion for Class Certification, urging the Court to permit young adults to collectively challenge a State policy that places medically fragile individuals with disabilities at risk of institutionalization after turning 21.

The Court granted Plaintiffs' Motion for Class Certification on November 22, 2010. The case is currently pending.

U.S. Statement of Interest in Support of Plaintiffs' Motion for Class Certification (Word) | (PDF) - filed July 16, 2010)

Georgia Advocacy Office v. Shelp – 1:09-cv-2880-CAP – (N.D. Ga. 2010)
The United States filed a Statement of Interest on June 25, 2010 to address the issue of access to institutions and records granted to Protection and Advocacy systems pursuant to the P&A acts. The United States argued that the P&A Act vests the P&As with broad access to people, facilities, and records to achieve the Acts' purpose of protecting vulnerable individuals from abuse and neglect.

Statement of Interest (Word) | (PDF) - filed June 25, 2010

Disability Rights New Jersey, Inc. v. Velez – 05-CV-4723 – (D.N.J. 2005)
Hundreds of persons with developmental disabilities residing in several large State-owned-and–operated institutions in New Jersey brought this suit, alleging that the State fails to provide them with services and supports in the most integrated setting appropriate to their needs.

In May 2010, the parties filed cross-motions for Summary Judgment. The United States filed an Amicus Curiae Brief supporting the plaintiffs and arguing that unnecessary segregation of individuals with disabilities in institutions is a form of discrimination prohibited by the ADA. The United States also asserted that New Jersey is failing to serve individuals with disabilities in the most integrated setting appropriate to their needs and that continued unjustified institutionalization violates their rights.

On September 24, 2010, the Court denied both parties' Summary Judgment motions and set the proceeding for trial. (2010 WL 3862536). The case is currently pending.

U.S. Brief as Amicus Curiae in Support of Plaintiffs' Motion for Summary Judgment (PDF) - filed June 21, 2010

Haddad v. Arnold – 3:10-CV-414 – (M.D. Fla. 2010)
Michelle Haddad successfully sought a preliminary injunction enjoining the State of Florida from denying her the home and community-based services available under its Traumatic Brain Injury/Spinal Cord Injury Medicaid Waiver.

The United States had filed a Statement of Interest in Support of Haddad's Motion for Preliminary Injunctive Relief. On April 19, 2011, the Court granted the parties' joint motion to dismiss with prejudice.

Michelle Haddad continues to receive home and community-based services under the State's Traumatic Brain Injury/Spinal Cord Injury Medicaid Waiver.

U.S. Statement of Interest in Support of Plaintiff's Motion for Preliminary Injunction (Word) | (PDF) - filed May 24, 2010

U.S. v. Arkansas – 10-CV-327 – (E.D. Ark. 2010)
The United States filed suit against the State of Arkansas and Arkansas officials on May 6, 2010, alleging that the defendants were violating the ADA by failing to provide services to individuals with developmental disabilities in the most integrated setting appropriate to their needs and by failing to provide community service options for the 1400 people on waiting lists at risk of institutionalization.

On January 24, 2011, the U.S. District Court for the Eastern District of Arkansas dismissed the complaint without prejudice on procedural grounds relating to pre-litigation notice to the State.

U.S. Complaint Alleging Violations of the Americans with Disabilities Act (PDF) - filed May 6, 2010

Clinton L., et al. v. Cansler, et al. – 10-CV-00123 – (M.D.N.C. 2010)
Individuals with developmental disabilities and mental illness challenged the State's proposed reductions in reimbursement rates for in-home services that will have the effect of eliminating providers that offer medically necessary services that enable individuals to successfully reside in the community and will place them at risk of institutionalization.

On February 16, 2010, the United States filed a Statement of Interest in support of Plaintiffs' Motion for Preliminary Injunction.

The Court denied the Motion, but ordered the State to provide appropriate community based services during the pendency of the lawsuit.

U.S. Statement of Interest in Support of Plaintiffs' Motion for Preliminary Injunction (Word) | (PDF) - filed February 16, 2010

Ligas v. Maram – 05-CV-04331 – (N.D. Ill. 2005)
In January 2010, the United States filed a Statement of Interest urging the Court to grant preliminary approval of the Plaintiffs' and Defendants' jointly submitted Consent Decree in a case regarding large, private facilities for individuals with developmental disabilities. Intervenors, primarily family members of residents, strongly opposed the agreement. The Court referred all the parties to settlement negotiations and the United States participated in those discussions. All parties, including the intervenors, reached a revised agreement

that requires the State to move at least 3,000 individuals with developmental disabilities into community-based settings within the next six years. The Court approved the revised Settlement Agreement in June 2011.

U.S. Statement of Interest in Support of the Parties' Proposed Consent Decree (Word) | (PDF) - filed January 26, 2010

Marlo M. v. Cansler – 09-CV-535 – (E.D.N.C. 2009)
In a case brought by two individuals with mental illness and developmental disabilities who faced institutionalization because of the State's decision to reduce their community-based services, the United States filed an Amicus Brief in Support of Plaintiffs' Motion for Preliminary Injunction in December 2009, requesting that the Court stop the State from reducing the services.

The Court granted Plaintiffs' Motion for Preliminary Injunction on January 17, 2010. (679 F.Supp. 2d 635).

U.S. Memorandum as Amicus Curiae in Support of Plaintiff's Motion for Preliminary Injunction (Word) | (PDF) - filed December 23, 2010

Connecticut Office of Protection and Advocacy v. State of Connecticut – 3:06-CV-179 – (D. Conn. 2006)
The Plaintiffs in this lawsuit challenge the State of Connecticut's reliance on privately-run, segregated nursing facilities to serve the needs of individuals with mental illness who would be more appropriately served in community-based settings.

The United States filed an Amicus Curiae Brief opposing the State's Motion to Dismiss.

The Court denied the Defendants' Motion to Dismiss and granted in part Plaintiffs' motion for class certification on March 31, 2010. (706 F. Supp. 2d 266)

The case is ongoing.

U.S. Memorandum as Amicus Curiae in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss (Word) | (PDF) - filed November 25, 2009

ARC of Virginia, Inc. v. Kaine – 09-CV-686 – (E.D. Va. 2009)
The United States filed an Amicus Curiae Brief supporting the ARC of Virginia's challenge to the State of Virginia's plan to build a costly, institutional facility for individuals with intellectual disabilities, a plan that Plaintiff alleged would result in seventy-five individuals being moved to unnecessarily segregated facilities. The Court denied the Plaintiff's motion for preliminary injunction and granted the defendants' motion to dismiss in December 2009.

U.S. Memorandum of Law as Amicus Curiae in Opposition to Defendants' Motion to Dismiss (Word) | (PDF) - filed November 24, 2009

Long v. Benson – 08-16261 – (11th Cir. 2010) (related to Lee v. Dudek)
Clayton Griffin—a member of the class in *Lee v. Dudek* and who is partially paralyzed—successfully sought a preliminary injunction requiring the State of Florida to provide him with community-based services through the State's Medicaid program, instead of requiring him to remain in a nursing home in order to receive needed services.

The State of Florida appealed the ruling to the Eleventh Circuit Court of Appeals, and the United States filed an Amicus Curiae Brief noting that ADA regulations are enforceable through a private lawsuit. The United States also noted that the ADA regulation stating that entities are not required to provide "personal devices and services" to individuals with disabilities does not exempt entities from complying with the integration regulation when they choose to operate a program that does provide personal services and devices to individuals with disabilities.

The Eleventh Circuit affirmed the District Court's grant of Mr. Griffin's request for preliminary injunctive relief. (383 F. App'x 930)

Brief for the United States as Amicus Curiae in Support of Appellee (PDF) - filed April 2, 2009

U.S. v. Nebraska –8:08CV271 – (D. Neb. 2008)
On March 7, 2008, the Division issued a CRIPA/ADA findings letter to the State of Nebraska that detailed systemic conditions that violated the constitutional and statutory rights of the residents of the Beatrice State Developmental Center ("BSDC"), the State's largest facility for persons with developmental disabilities. At the time, BSDC housed close to 350 residents. The parties then swiftly concluded negotiations on a judicially enforceable remedial agreement. On July 2, 2008, the Hon. Richard G. Kopf, United States District Court Judge for the District of Nebraska (Lincoln), signed the parties' proposed consent decree as an order of the court. The agreement provides for oversight by a court monitor. Our decree has a strong ADA/Olmstead focus that has prompted the State to greatly expand community resources and to place dozens of BSDC residents into more integrated community settings. The State has funded the creation of new community programs, including specialty residential and day programs to meet the needs of persons with difficult health care and/or behavioral concerns. The census at BSDC has been cut about in half so far, and there are tangible plans to place several dozen more individuals in the community in the near future. The Division has accompanied the Independent Expert on just about all team monitoring visits since the decree took effect.

United States v. State of Nebraska, Beatrice State Developmental Center Settlement Agreement (PDF) - filed July 2, 2008

Beatrice State Developmental Center in Beatrice, Nebraska Findings Letter (PDF) - filed March 7, 2008

Laguna Honda Hospital and Rehabilitation Center (LHH)
In mid-June 2008, the Division executed a comprehensive Settlement Agreement with the City of San Francisco to address outstanding deficiencies at the LHH nursing home. LHH is owned and operated by the City through the San Francisco Department of Public Health, and is licensed as both a skilled nursing facility and an acute care hospital. At the time of our settlement, LHH was the largest publicly-operated, single-site nursing home in the United States with a capacity of over 1,200 skilled nursing beds. The Division issued CRIPA/ADA findings letters on May 6, 1998, April 1, 2003, and August 3, 2004, that collectively concluded, in part, that the City engages in a pattern or practice of unlawful conduct with respect to placement of qualified LHH residents in the most integrated setting pursuant to the ADA. The Settlement Agreement required the City to address our findings, in part, by developing and implementing appropriate services and supports for residents in integrated community settings. Because of our settlement, the City has reduced the census capacity of LHH by more than one-third and developed a rich network of community homes and programs that now serve hundreds of former LHH residents as well as an unquantifiable number of persons who likely would have been admitted to an institutional setting like LHH but for the newly-established community network. Community residences include scattered-site apartments and other integrated homes throughout the San Francisco metropolitan area that are supported by an effective community system of case management and other clinical professionals.

Settlement Agreement between the United States Department of Justice and City and County of San Francisco Regarding the Laguna Honda Hospital and Rehabilitation Center, California (PDF) - June 13, 2008

Laguna Honda Hospital and Rehabilitation Center in San Francisco, California (PDF) - August 3, 2004

Laguna Honda Hospital and Rehabilitation Center (California) (PDF) - April 1, 2003

Laguna Honda Hospital (California) (PDF) - May 6, 1998

U.S. v. Puerto Rico – 3:00-cv-01435 – (D.P.R. 1999)
Several years ago, the Division issued two CRIPA/ADA findings letters concluding that the Commonwealth of Puerto Rico was violating the constitutional and legal rights of several hundred persons with developmental disabilities who had been living in one or more of the Commonwealth's six residential institutions. Shortly thereafter, the Division reached agreement with the Commonwealth that Puerto Rico would develop and implement a series of measures to drastically transform the nature of its service-delivery system for persons with developmental disabilities. In recent years, the Division has been actively monitoring the Commonwealth's compliance with three CRIPA/ADA consent decrees, as well as several other court orders, all executed to protect the rights of persons with disabilities. The most recent of the consent decrees has a primary ADA/Olmstead focus and is called the "Community-Based Service Plan." It is a comprehensive

community plan that has effectively changed the Commonwealth's service-delivery system from an institutional model to an entirely community-based system. Through our efforts, we have been successful in prompting the Commonwealth to close all six of its government-run residential institutions and, in their place, to create a vast network of small homes and other programs in integrated community settings all across the island. The Division has also prompted the Commonwealth to create competitive and supported employment and other meaningful opportunities for many of the former-residents in integrated community settings. We conduct regular onsite compliance visits of the community homes and programs in conjunction with a court monitor, and we participate in regular status hearings and conferences before the Hon. Gustavo A. Gelpi, United States District Court Judge for the District of Puerto Rico. In recent years, at our urging, the court has issued several orders to prevent proposed massive cuts in personnel and to the budget of the Commonwealth's intellectual disabilities program, thus ensuring continued services to the vulnerable participants. The Division is also currently monitoring the adequacy of the delivery of clinical and other professional services to the community participants.

Community-Based Service Plan (PDF) - filed October 9, 2001

United States v. Commonwealth of Puerto Rico Interim Settlement Agreement (PDF) - filed May 4, 1999;

see also:

Supplemental Interim Settlement Agreement (PDF) - filed July 20, 2000

Transition Order (PDF) - filed December 10, 2008

Compliance Order (PDF) - filed August 17, 2009

United States v. Commonwealth of Puerto Rico Complaint (HTML) - filed April 21, 1999

Letter of Findings (HTML) - filed December 11, 1997

Center for Integral Services Developmental Disabilities Facility Findings Letter (HTML) - filed June 11, 1997

Faces of *Olmstead*

The personal stories of a few of the thousands of people whose lives have been improved by the *Olmstead* decision and the Department's *Olmstead* enforcement work.

Integrating Workers with Intellectual and Developmental Disabilities in Rhode Island

In June 2013, the Department reached an Interim Settlement Agreement with the State of Rhode Island and the City of Providence to provide relief to approximately 200 individuals with intellectual and developmental disabilities who received services from the segregated sheltered workshop and day activity service provider Training Through Placement, Inc., and the Harold A. Birch Vocational Program, a special education program which operated a segregated sheltered workshop inside a Providence high school. Under the agreement individuals will receive access to integrated supported employment and integrated day activity services, allowing them to become more active participants in the community. Here are the stories of a few individuals who have already benefited from the agreement.

STEVEN

For the past thirty years Steven has done what millions of Americans do every day: he gets up early in the morning, goes to work, and earns a paycheck. The fact that Steven has an intellectual disability has never stopped him from seeking to earn a living. But, for most of Steven's life he has had little choice other than to work in a segregated sheltered workshop where he earned well below minimum wage and had little to no contact with non-disabled persons, other than supervising staff.

From 1983-2013, Steven worked at the sheltered workshop and day program provider Training Through Placement, Inc. (TTP), located in a former school building in North Providence, Rhode Island. Steven was one of about 90 people with intellectual and developmental disabilities performing piecework at TTP. There, workers sat along cafeteria-style tables in old classrooms and breezeways, and were assigned tasks such as assembling, sorting, packing, and labeling various products like medical supplies and jewelry. Steven also worked on the facility's "Pandora's Products" line, stuffing peppers, grating cheese, and placing food products in jars.

When Steven first entered TTP, he thought it would be a short stay – just long enough to gain the skills necessary to secure long-term employment in the community. After all, as Steven points out, "the name of the provider is Training Thru Placement." Steven had previously worked in a hardware store after high school and wanted to gain additional skills before returning to the general workforce. But that didn't happen. Because of the lack of State-funded employment services and supports that would have made it possible for him to return to competitive employment, Steven was trapped at TTP for decades.

When he began working at TTP Steven earned approximately $2 an hour. Because TTP held a "special minimum wage" certificate, it was permitted to pay individuals with disabilities sub-minimum wages. These wage rates are based on workers' individual productivity as compared to that of experienced workers without disabilities performing the same work. In spite of his three decades of experience, however, Steven was never promoted and never received a meaningful raise in wage. Thirty years after he began working at TTP, Steven still earned the same wage of approximately $2 per hour—substantially below Rhode Island's minimum wage of $7.75.

Year after year, Steven asked for the services necessary to help him secure integrated employment. No effort was made to assist him in finding a job at a competitive wage that matched his strengths and interests.

All of that is now changing for Steven and the service recipients at TTP. Over the next year the State will provide supported employment services and placements to all people at TTP to help them find, get, keep, and succeed in real jobs. The services will be designed to help people access jobs in typical work settings where they can interact with non-disabled peers and earn at least minimum wage. And when individuals are not working, they will have access to integrated day services. Under the agreement negotiated with the state, individuals like Steven receive supported employment and integrated day services sufficient to support a normative 40 hour work week, with the expectation that individuals will work, on average, in supported employment for at least 20 hours per week.

As a result of the settlement agreement, Steven has finally fulfilled his thirty-year goal of community employment. Steven is flourishing in his new job at a local small business headquartered in Warwick, where he works at least twenty hours per week. He enjoys working in an office setting, and because of his effective self-advocacy, he persuaded his employer to provide him with computer training, which will allow him to expand his skill set and advance his career.

Thinking back on his time in the sheltered workshop, Steven noted, "we just did what we thought we were supposed to do, and while we believed that many of us could do more with our lives, we did not know how to make that happen." When asked what it means to Steven to realize his dream of working in the community, Steven responded, "it is a big achievement for me; I've been waiting a long time for this."

The President of the company, Alan, initially did not know what to expect from Steven, but quickly realized he had made a prudent investment: "When you hire someone with disabilities, you think you are helping them out, but no business owner can possibly imagine the benefits that they will receive in return." Reflecting on Steven's dedication, abilities, and successes thus far, Alan says, "I can't help but think if Steve had this opportunity twenty-five years ago, where he'd be today—we are very lucky to have Steve on board."

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ORQUIDEO "Q"

After graduating from the Birch Vocational High School at the age of 21, Orquideo "Q" went straight into a sheltered workshop, where he earned $2.85 an hour performing piece rate work. He stayed there for eight years.

When the sheltered workshop closed this summer after a settlement agreement between the U.S. Department of Justice and the State of Rhode Island, the provider Fedcap began working with Q to identify job opportunities in competitive industry. Q shared that he had a passion for working with cars, which led to his current employment at a local auto-repair shop. Q now works in the community for at least thirty hours per week.

Q takes great pride in his work, including car details, oil changes, tire rotations, and worksite maintenance. He catches two buses and is the first to arrive at work every morning. His supervisor, Greg, describes Q's enthusiasm to learn and his willingness to try new things as some of his most valuable assets. After seeing Q work and interact with colleagues and customers, Greg strongly affirmed that there is "no question that Q should be working in the community" rather than a sheltered workshop—"he is a great employee and has continued to grow every single day."

Greg observed early on that he could supply valuable natural supports to Q to ensure his success on the job. To assist Q in making sure his tools were accounted for, Greg devised an easy labeling system for the tools. The system has been so successful that Greg has expanded it to all of his work stations and for all of his employees. Greg highlights this anecdote as just one example of the many benefits that Q has brought to his business.

Cheryl, Q's job coach through Fedcap, facilitated Q's transition into the general workforce. She observed that "community employment has given Q such a sense of pride and accomplishment that he didn't have in the sheltered workshop." Cheryl also notes that, because of the natural supports that have developed at the auto-repair shop, her role has already decreased dramatically and she rarely goes to the job site.

Q's competitive income has also afforded him new financial freedoms. With his first paycheck he bought a bed for his dog, which he had wanted to do for some time. And with his next paychecks, he plans to buy shoes and clothes for himself. But to Q, money is not the most important element—when asked what he loves most about his job, he says it's his coworkers: "They make me laugh a lot and they make me feel comfortable—they make me feel like I am a part of them."

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LOUIS

In 2008, Louis graduated high school with a diploma, but because of a developmental disability that restricts his verbal-motor functions, he was unable to secure long-term integrated employment. His mother Lori - a fierce and devoted advocate for her son—found in a sheltered workshop setting "a closed and protective environment" where Louis "would be among others with similar needs." Louis worked at the sheltered workshop Training Thru Placement (TTP) for two and a half years, earning well below minimum wage.

When the U.S. Department of Justice reached an agreement with the State of Rhode Island this past summer to transition sheltered workshop participants to integrated employment, Lori objected: "We were very happy with TTP because Louis had work, socialization, and the other clients looked up to him." After some persuasion, however, Fedcap—the agency responsible for transitioning the workshop participants—convinced Lori to explore the option of supported employment.

In October Louis started his new job at Eleanor Slater Hospital, a state hospital, where he utilizes his strong computer skills and passion for mathematics to generate Excel reports, record timesheets, and complete other office-related duties. Louis works at the hospital for forty hours per week. He drives himself to and from work and especially enjoys having his own office, which he has decorated with Red Sox paraphernalia. When asked about challenges that he has faced in his job, Louis jokingly admits that wearing a necktie every day is still somewhat of a struggle.

Seeing her son thrive in the mainstream workforce has dramatically changed Lori's perspective about supported employment. In fact, she recently joined Fedcap/TTP's Board to promote the efforts of community employment for individuals with disabilities.

Looking back Lori admits: "By trying to protect Louis, I was capping him." Lori says that in just a couple of months in his new job "Louis has come out of his shell and his confidence levels are through the roof." Lori was especially touched when, after the Red Sox won the World Series, Louis went out and surprised his father and uncle (also ardent baseball fans) with championship t-shirts that he purchased with his own money. Louis's job has forever changed the family dynamic and the course of his own life. Now, Lori says, "the sky is the limit."

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PEDRO

The day after Pedro graduated high school in 2010, at age twenty-one, he found himself at home with no job prospects and no career direction. A native Spanish speaker with intellectual disabilities, Pedro was not prepared to enter the general workforce; instead, he was headed for a life of segregated employment and below-minimum wages in a "sheltered workshop." Sheltered workshops are places where people with disabilities spend the day typically doing repetitive manual work to fulfill contracts with private businesses. Workers in sheltered workshops generally have little or no contact with anyone without a disability and are often paid below the minimum wage.

Pedro attended a Providence high school where students with intellectual disabilities participated in an in-school sheltered workshop. In the workshop there were no students without disabilities. The students spent most of their school days sorting, assembling, and packaging items such as jewelry and pin-back buttons. They earned between 50 cents and $2 per hour for their work. Rather than receiving the education and services needed to help them move into regular jobs, students were being prepared for segregated, below-minimum wage work in adult sheltered workshops. Indeed, in 2013, the U.S. Department of Justice found that Pedro's school-based sheltered workshop was a direct pipeline to a nearby adult sheltered workshop.

After graduating from the school's sheltered workshop, Pedro began working at the adult sheltered workshop. Staff described him as an excellent worker who stays on task and performs well. But Pedro was paid just 48 cents an hour. And, because people who enter the adult workshop often stay there for decades and are rarely offered help to move into real jobs in the community, Pedro's career outlook was dim.

That all changed in June 2013 when the department reached an Interim Settlement Agreement requiring Rhode Island and Providence to provide employment services to help workers at the adult workshop and students at the school's sheltered workshop move into community jobs. At the same time, the school closed its sheltered workshop, so students with disabilities can focus on education and preparing for real jobs.

Pedro was interested in the restaurant industry, and in the summer of 2013 he joined a culinary arts training program. Twelve weeks later, helped by a combination of federal and state services, Pedro began working in the kitchen at a restaurant in North Kingstown. He has excelled and forged strong working relationships with other employees. He says he loves his job and especially enjoys preparing coleslaw for customers.

In December 2013, just three months after he started at the restaurant, Pedro was Employee of the Month. His manager said that Pedro was chosen for the award because "he has changed the culture of the company by inspiring everyone around him to reach higher; he has led by example." The company's owner describes Pedro as the heart of the business: "He has a great personality and loves working here – but more than just a personality, he does a great job."

Pedro started his job with a job coach, funded by the state and federal government, but because the restaurant was such a good job match for Pedro and natural supports developed quickly, Pedro no longer needs coaching service. In fact, Pedro is now helping the job coach train other employees with disabilities.

Pedro deeply values his job at the restaurant, where he gets to work with peers without disabilities, earn a competitive wage and benefits, and enjoy all the advantages of community employment. His supervisor says the company, too, has experienced major benefits. She describes the strong sense of pride that comes from hiring Pedro and giving him the opportunity to realize his capabilities and participate in the American workforce: "It's a very fulfilling experience to see Pedro mainstream himself, to show responsibility, and to see him getting an honest wage for his work." Pedro's life is on a new path – and for this young man, there's no looking back.

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Mental Health and Developmental Disabilities Services in Georgia

In October 2010, the United States settled its case against the State of Georgia, resolving claims that persons with mental illness or developmental disabilities were harmed by unnecessary confinement in State hospitals. The State agreed to create meaningful community services systems, including crisis services, case management, housing supports, and other services supporting full integration in daily life for persons with mental illness or developmental disabilities receiving State services. Here are stories of some of the people who have benefitted from the Georgia agreement.

MICHAEL

Michael spent years in and out of rehab and battling depression, eventually ending up in a halfway house where he constantly felt unsafe. Michael said he "never had any peace" and he "didn't care if I died."

In March, Michael met with a caseworker at a local supported employment program. His caseworker, Jody, helped Michael develop interview skills, work on his resume, and start applying for jobs. Soon after, Michael got a full time job working with inventory at a large corporation. He values knowing "when my next paycheck will be" and being able to provide for his own needs. Jody has stayed involved in Michael's life, checking in on him at least once a week and going out of his way to help him out.

Michael also received a housing voucher which helped him to get his own apartment. Living near work has made it possible for him to keep his job. Beyond that, Michael has loved having his own home. He now has privacy, feels safe, and "I can sleep at night now." When people ask where he lives, he said "I don't feel embarrassed anymore."

Community supports have given Michael some stability and with their help he has rebuilt a life for himself. His depression has improved since he now has a job and "a place to call my own." Michael has a new sense of purpose and looks forward to each day, saying "I want to wake up every morning now."

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JOHN

Like many people, John likes to go swimming. And this summer, there was no shortage of it for the 36-year-old Athens, Ga. resident. He often spent afternoons lounging by the pool in his apartment complex, and he regularly visited a local lakeside recreational area complete with picnic tables, beach, and a small swimming area. John, who has a severe intellectual disability, likes to call it "the ocean."

Until John moved into his own apartment about two years ago, such summers would not have been possible for him. He had been living at Central State Hospital in Milledgeville, Ga., an institution that served individuals with serious mental health diagnoses and intellectual disabilities. Residents went swimming on occasion, but they had little choice in the matter. They followed the schedule set by staff members, and they went swimming – in groups – only when it was on the agenda for the day. Now, John can swim every day – if he chooses to.

"That's the biggest difference," said John's father, Vaughn. "Now, it's his choice. If he wants to go swimming, he goes swimming. If he wants to go shopping, he goes shopping."

He swims, he shops, he sits on his balcony and chats with passersby. Two caregivers, made available through the nonprofit agency Georgia Options, typically stay with John throughout the day to be sure his needs are met. One stays with him during the night. Every other weekend, John visits his parents in Eatonton, 50 miles away. And on weekends when he's at his apartment, he typically sees his sister, Laura, who lives nearby.

Despite some misgivings about the tremendous transition John made into the community, Vaughn said he's pleased with where John is now. "We're happy with where he is, and we're happy with the way things are going," he said. "He still has unhappy moments, but overall, he's happier, calmer, and more at ease because he's living on his own."

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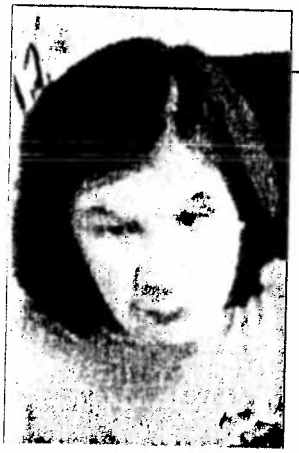

CINDY

A simple lunch date at a local restaurant was once unimaginable for Louise and her daughter, Cindy. But now that Cindy lives in a home a mere 20 minutes from her mother, the two have met for lunch weekly, accompanied by Cindy's ever-present caregivers. One such meeting in late October 2012, when Cindy greeted her mother with a hug, was particularly meaningful for Louise. "Cindy had never done that before," she said. "But since she's been living nearby and I'm able to see her more, I now believe Cindy knows who I am."

Cindy, who is 31, has severe developmental delays and needs assistance with many basic tasks. "You can't ever leave her alone," her mother said. "She doesn't know to look both ways before stepping into the street. She doesn't know to avoid touching a hot stove."

For years, Louise and her husband, Ashley, had cared for their daughter at home, but by the time she was 16 her aggressive behavior had worsened, prompting her parents to place her in state care. Until last year, she was residing in Southwestern State Hospital in Thomasville, Georgia, 85 miles away from her parents' home in Dawson.

In July of 2011, shortly before her father died, Cindy moved into her current home, which she shares with her caregivers and three roommates. Before the move, her parents had been nervous, fearing she would be subject to abuse in a smaller setting. But now Louise couldn't be happier, and she is especially glad her husband lived long enough to see Cindy's new surroundings.

"I just really feel like the Lord has been a part of this process," she said. "It's great having Cindy so much closer and being able to see her more often. But my biggest concern is her well-being, and I can see that she's being taking care of. And she just seems really satisfied. That's important to me."

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Mental Health Services in Delaware

In July 2011, the United States Department of Justice ("DOJ") signed an agreement with Delaware to transform that State's mental health system. The Agreement will help more than 3,000 individuals move into the community and out of Delaware's state operated psychiatric hospital and other state-funded psychiatric facilities or avoid having to enter these institutions to get needed services. Instead, the Agreement is aimed at providing individuals with mental disabilities those necessary supports and services to allow them to live and thrive in the community. Here are the stories of a few of the people who have already benefited from the Agreement.

MICHAEL

Michael, 21, has been hospitalized repeatedly and is now successfully working at the a corporate restaurant chain as a line cook. Michael is a graduate of a culinary program run by Connections, a provider of community mental health and substance abuse services licensed by the Delaware Division of Substance Abuse and Mental Health following the Settlement Agreement. Since October 2011, when the program was established, 90% of the enrollees have been able to obtain employment. Michael, when asked to describe his life now, responded: "I couldn't be any happier than I am now; don't ever see myself going back."

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KNICOMA

Knicoma is an artist working with the Creative Vision Factory, in Wilmington, Delaware, an art center founded in 2011 to provide individuals with behavioral health disorders an opportunity for self-expression, empowerment, and recovery through its studio and exhibition program. Knicoma was recently selected as an emerging Delaware artist and given a grant through the National Endowment of the Arts. He specializes in drawings in a variety of media. His works confront the evils he sees lurking in today's world and offers a range of redemptive solutions and "ways out." Knicoma believes the messages informing his art assist others in their journey to self-awareness and enlightenment, "to help stop the things that happen over and over again in people's lives – to break the cycle." Knicoma has a strong belief in art's role as a means for social and personal change. "I paint from the experiences I've had." Although he has been hospitalized in psychiatric hospitals in the past, Knicoma now lives on his own. "The person that I am makes the pictures that I make." Asked how the Settlement Agreement affected him, Knicoma responded "Matter of respecting somebody – respect is letting others know that you honor him as a human being."

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JAMES

James, a 48-year-old man, is a recovering drug addict who has depression. He now works as a para-transit driver and as a licensed barber. James provides free haircuts at a local community peer center for individuals who are in recovery. When asked why he provides these services, James answered that "I enjoy helping people and giving back."

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ROSE

Rose is a 65-year-old woman who was formerly homeless. She spent two and a half years at the Delaware Psychiatric Center. She was offered a community placement, due to the agreement, in October 2011. Rose is now living in an apartment and receiving community services, which she describes as "more like life in the past." Rose says she treasures "being able to go where you want" and "having anyone over without getting someone else's approval." She says it is the little things that mean the most. "I now have the right to just live and the freedom to open and close doors." Rose says, "I love it here," where "I can have neighbors and friends in the community." Asked about the differences from the state hospital, Rose said that she "feels a lot safer here" and that she "is no longer scared" and in a "constant threatening situation." Rose is currently helping organize a women's wellness group and feels that she now has "the right to just live." Asked how the settlement agreement affected her life, Rose said: "Thank you for giving me back my life."

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DONALD

Donald, who has schizophrenia and spent four years at the Delaware Psychiatric Center, has successfully moved to his own apartment, with the help of intensive community services provided under the settlement agreement. He is able to do his own cooking, shopping, and laundry. As Donald says, he is "now treated like everyone else." He said that, after years in the psychiatric center where all decisions were made for him and life "can break you," he now feels that "life is going smoothly." Donald knows his neighbors and has made new friends. Asked about how the settlement agreement affected him, Donald responded: "Independence means being able to accept friendship from other people." "I'm seen as a together brother."

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Developmental Disabilities Services in Virginia

In January 2012, the Department reached a settlement agreement with the Commonwealth of Virginia to transform its system for serving people with intellectual and developmental disabilities from one that is heavily reliant on five institutional Training

Centers to one that emphasizes community-based services. The agreement, which was approved by the Court in August 2012, will help over 5,000 people move to the community or remain in the community with appropriate supports.

As required under the Agreement, the Commonwealth of Virginia is making community-based settings available to individuals choosing to leave the State's Training Centers, and other individuals qualifying for, and in urgent need, of community services. The Virginia Board for People with Disabilities prepared a video called *Place Matters* about individuals who have recently transitioned from Training Centers to the community: http://www.vaboard.org/

Below are the stories of a few people whose lives have been affected by services similar to those that will be provided under the settlement.

STEFON

Stefon is an 18-year-old with a profound intellectual disability and visual, orthopedic, and language disabilities. Although his support needs are serious, they are all being addressed well in the community. Stefon graduated from his local high school, attended his senior prom, and has won national praise for his participation in Special Olympics. As his mother states, "Stefon is living a meaningful and rich life even though he has profound and multiple disabilities."

With the supports of Virginia's Medicaid Waiver for people with intellectual disabilities, Stefon is able to live at home with those who love and support him. As his mother states: "Receiving a Waiver literally changed our lives. Stefon is able to live an independent life doing the things he enjoys . . . My son's life is significant; he has affected the lives of many people that he has encountered in the community."

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DOUG

James and Elaine are the parents and legal guardians of Doug, a 41-year-old man with Down syndrome who has serious cognitive disabilities and requires assistance with bathing, dressing and other activities of daily living. Doug lived at the Southeastern Virginia Training Center ("SEVTC") for 20 years. In 2010, Doug received a Medicaid Waiver and moved to a small group home near his family.

James explains, "I was very afraid when we began to consider community placements for Doug." While at SEVTC, Doug had to use a wheelchair, but now he walks all the time. After a very smooth transition, Doug no longer needs to eat his meals in a pureed form. He now gets great joy from eating solid foods, especially pancakes, hamburgers, and chocolate cookies. Doug enjoys weekly trips to the bowling alley with his friends, shopping trips, and meals at restaurants in the community. According to James, "quite simply, the services being provided have exceeded my expectations by leaps and bounds, and Doug is happier and more active than I ever imagined was possible."

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MARISA

Marisa is a 27-year-old with a degree from the Northern Virginia Community College who is now working toward a Social Work degree. Marisa has cerebral palsy, which affects all her limbs and her speech. She uses a power wheelchair to get around and needs assistance with nearly all her physical needs. Before she received a Medicaid Waiver for community-based services, Marisa relied almost entirely on her single mother to provide the physical care she needed. Now she has the

supports she needs to live at home and do the things she wants to do, including volunteering, giving back to the community, and doing the everyday things she needs to do to be independent. "I hope to be even more independent. . . I want to help families and individuals navigate the system to obtain the services they need."

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People with Physical Disabilities in Florida and Missouri

The Department has filed briefs in support of private suits challenging states' refusal to provide community services to people with physical disabilities in order to keep them out of nursing homes. These are the stories of a few of the people who are living in their communities as a result.

MICHELE

At age 47, Michele was struck by a drunk driver while riding her motorcycle, and she became quadriplegic. While in the hospital, she applied for Florida's spinal cord injury Medicaid Waiver program to get services in her home. But when she got word that she would have to wait about five years before getting services, the future seemed dim. "After my accident it was vitally important for me to quickly get back into a routine and become integrated back into society, and I was anxious to be at home in my familiar environment."

Because her family was able to provide around-the-clock care, she was able to live at home. But when her personal circumstances changed and she no longer had all of the support she needed to avoid placement in a nursing home, Michele tried again to get community-based services. She was told there were insufficient funds for those services, but that if she entered a nursing home for ninety days, she would become eligible to receive community-based support services to move back out. "I feared that in the process of being forced into a nursing home that I would lose control over my routines, over the things that I enjoyed to do, and essentially be helpless and have less joy in my life."

Michele filed, and won, a lawsuit under the ADA and *Olmstead*, requiring the State to provide community-based services without requiring her to first move into a nursing home. DOJ filed a brief in support of her claim. Today, Michele is still living at home with the community-based services she needs.

"*Olmstead* allowed me to stay at home versus being forced to be institutionalized. To be able to remain in the community means all the difference in the world. It gives me the freedom to live as normal of a life as I possibly can after my life altering accident."

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NENA

After she broke her neck and back in a 1989 automobile accident, Nena became paralyzed and uses a power wheelchair. She has a neurogenic bladder and bowel and relies on the use of incontinence supplies. Realizing that her parents were getting older and one day would not be able to care for her, she made the decision to live independently.

"I wanted to know that I could make it on my own." And she could. She went to college, received a degree in accounting, got married, and raised a daughter. But when her personal circumstances changed and she could no longer afford the costly incontinence supplies, she was faced with some tough decisions—cut back on the use of supplies or default on her bills. She tried to stretch her

resources by cutting back on supplies, but developed infections, abscesses, and was frequently on antibiotics.

Nena met with state legislators and advocated for six years to persuade the State to assist with the cost of the incontinence supplies. However, the Missouri Medicaid program refused to cover the cost unless she was in a nursing home. "We were told several times that they would only be covered if I lived in a nursing home."

Fearing that the only way to receive the supplies she needed was to move to a nursing home and lose her independence, Nena, and several others in the same situation, filed suit and DOJ filed a brief in support of their claim. The federal district court agreed that the State had violated the ADA, and that under *Olmstead*, the State was required to provide incontinence supplies to adults who needed them in the community.

"*Olmstead* opened up a world for people like me who were trapped. I'm fifty-one years old and I don't trap well. I hunt, I fish, and I've taught both of my granddaughters. Everything that my parents and my grandparents did with me, I do with them. I consider it very important; it helps build strong family values. That is something that I could not do from a nursing home."

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U.S. Department of Justice
Civil Rights Division

Assistant Attorney General
950 Pennsylvania Ave, NW - RFK
Washington, DC 20530

June 29, 2012

The Honorable John Kroger
Attorney General for the State of Oregon
Department of Justice
1162 Court Street NE
Salem, OR 97301-4096

Re: United States' Investigation of Employment and Vocational Services for Persons with Intellectual and Developmental Disabilities in Oregon Pursuant to the Americans with Disabilities Act

Dear Attorney General Kroger:

We write to report the findings of the Civil Rights Division's investigation of the State of Oregon's ("the State" or "Oregon") system of providing employment and vocational services to persons with intellectual and developmental disabilities and, in particular, the State's alleged unnecessary provision of such services in segregated sheltered workshops. We have assessed the State's compliance with Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12132 (2006), as interpreted by Olmstead v. L.C., 527 U.S. 581 (1999), which requires that services, programs, and activities provided by public entities, including States, be delivered in the most integrated setting appropriate to the needs of persons with disabilities. The Department of Justice is authorized to seek a remedy for violations of Title II of the ADA. 42 U.S.C. § 12133.

Consistent with legal requirements set forth in the ADA and in Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d-1, we write to provide you with notice of the State's failure to comply with the ADA and of the minimum steps that Oregon must take to meet its obligations under the law.

Before proceeding with our findings, we would like to thank the State for the assistance and cooperation extended to us in this investigation. We would also like to acknowledge the courtesy and professionalism of Director Kelley-Siel, Ms. Fay, Mr. Maley, and all of the other State officials and counsel with the Oregon Department of Justice who have been involved in this matter to date. We appreciate the helpful and relevant information the State has provided us in response to our inquiries. We hope that, moving forward, we may work toward an amicable resolution to this matter.

I. INTRODUCTION

Title II of the ADA prohibits discrimination in all "services, programs, and activities" of a public entity. 42 U.S.C. § 12132. Title II is part of the ADA's clear and comprehensive national mandate to end the segregation of persons with disabilities in virtually all aspects of American life, including employment, public accommodations, and transportation. See, e.g., 42 U.S.C. §§ 12101(a)(2), 12101(b)(1). "Quite simply, the ADA's broad language brings within its scope anything a public entity does." Lee v. City of Los Angeles, 250 F.3d 668, 691 (9th Cir. 2001) (internal quotations omitted).

Title II's integration mandate requires that the "services, programs, and activities" of a public entity be provided "in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d). Such a setting is one that "enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible." 28 C.F.R. Pt. 35, App. B at 673. Based on Title II and its integration mandate, the United States Supreme Court held that the "unjustified isolation" of persons with disabilities by States constitutes discrimination under Title II. Olmstead v. L.C., 527 U.S. 581, 600 (1999). Accordingly, the civil rights of persons with disabilities are violated by unnecessary segregation in a wide variety of settings including in segregated, non-residential employment and vocational programs.

Oregon is a leader in providing services to individuals with intellectual and developmental disabilities in community residential settings. It is one of a handful of states that no longer has any state-operated institutions for people with intellectual and developmental disabilities, and is one of an even smaller number of states with no state-funded, privately-operated institutions for this population.[1] Oregon has set an example for other states by demonstrating its express commitment to the benefits of transitioning individuals with intellectual and developmental disabilities into integrated, community residential settings. But Title II of the ADA and Olmstead mandate that individuals be given the opportunity to be integrated into the community more than just by their mere transition into integrated residential settings. Rather, individuals with disabilities have the right to live *integrated lives*, by participating in all aspects of community life.

In Oregon, in spite of the State's significant leadership and commitment to ensuring that people can live in integrated settings, thousands of individuals still spend the majority of their day-time hours receiving employment services in segregated sheltered workshops, even though they are capable of, and want to receive employment services in the community. Such

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[1] See Or. Council on Developmental Disabilities, Overview of Accomplishments 1 (January 2011) ("Oregon has closed all of its state institutions . . . . The last institution in Oregon was closed in 2010."). See also K. Charlie Lakin et al., Residential Services for Persons with Disabilities: Status and Trends Through 2009, at iii ("By June 30, 2009, nine states had closed all state operated residential facilities with 16 or more residents with intellectual and developmental disabilities (Alaska, District of Columbia, Hawaii, Maine, New Hampshire, New Mexico, Rhode Island, Vermont and West Virginia).") and United Cerebral Palsy, The Case for Inclusion app. 1, at 1 (2012).

unjustified segregation makes many of the benefits of community life elusive for people with disabilities, even though they are residing in the community. In this way, "work options" are frequently an important gateway to the other "everyday life activities" that the Supreme Court recognized in Olmstead to be severely diminished by unnecessary segregation, including "family relations, social contacts...economic independence, educational advancement, and cultural enrichment." Olmstead, 527 U.S. at 600-01. It is axiomatic that when "work options" in the community are severely diminished because of unnecessary segregation, so too are most other important everyday life activities, regardless of where one resides.

Work is undoubtedly at the core of how most Americans spend their time, contribute as taxpayers, relate to society, and, importantly, access the full benefits of citizenship, including economic self-sufficiency, independence, personal growth, and self-esteem.

Many individuals with disabilities in Oregon who can and want to receive employment services in the community are able members of our society, who will bring diversity and value to the community workplace, and who will gain economic independence and freedom by receiving services that will help them to access community jobs. Many of these individuals have similar potential to one Oregonian that we met with significant and multiple disabilities, who uses a power wheelchair and ably delivers same-day mail on a 23 mile route in his supported employment position. Many are people similar to another Oregonian that we met, who has disabilities similar to many people who have been told that they are "too severely disabled to benefit from employment," even though she now works in a supported employment position at a transportation center as a transit host, capably assisting other people with disabilities to access mainline transportation. While sheltered workshops may be permissible placements for some individuals who choose them, we believe that Oregon over-relies on sheltered workshops and places people in such segregated settings unnecessarily when they would prefer community placement with support services.

Accordingly, the unnecessary segregation of individuals with disabilities in segregated, non-residential employment and vocational programs violates Title II of the ADA and Olmstead. The civil rights of people who can and want to receive employment services in the community are violated when they are unnecessarily segregated in sheltered workshops.

II. SUMMARY OF FINDINGS

We have concluded that the State is failing to provide employment and vocational services to persons with intellectual and developmental disabilities in the most integrated setting appropriate to their needs, in violation of the ADA. The State plans, structures, and administers its system of providing employment and vocational services in a manner that delivers such services primarily in segregated sheltered workshops, rather than in integrated community employment. Sheltered workshops segregate individuals from the community and provide little or no opportunity to interact with persons without disabilities, other than paid staff. Many persons with intellectual or developmental disabilities in, or at risk of entering, sheltered workshops in Oregon are capable of, and not opposed to, receiving such services in the community, where they would have the opportunity to access individual jobs that pay minimum wage or higher. Indeed, our investigation found that Oregon provides such integrated services to some persons with intellectual and developmental disabilities, including persons with significant support needs. These services have succeeded in allowing such persons to work in jobs in the

community alongside non-disabled workers. Nevertheless, most persons with intellectual and developmental disabilities receiving employment and vocational services from the state remain unnecessarily – and often indefinitely – confined to segregated sheltered workshops. In addition, people with intellectual and developmental disabilities newly entering, or about to enter, the workforce, as well as those currently receiving integrated employment services, are at risk of entering segregated sheltered workshops. These individuals are in, or at risk of entering, sheltered workshops due to systemic State actions and policies, which include:

- The State's failure to develop a sufficient quantity of community-based employment and vocational services and supports for individuals with intellectual and developmental disabilities who are unnecessarily confined to sheltered workshops;

- The State's direction of available resources to segregated sheltered workshops rather than to community-based services; and

- The State's use of systemic criteria and methods of administration that unnecessarily require persons with intellectual and developmental disabilities to attend sheltered workshops in order to access and receive employment and vocational services.

These findings are consistent with a 2010 report commissioned by the State, which found that, in 2008, "71% of Oregonians with disabilities were in facility-based programs, supporting the claim that a majority of working age adults with significant disabilities are supported today in programs that offer segregation and long-term dependency regardless of cost."[2] This reliance on segregated employment is contrary to the desires of participants. The report found that "[i]ntegrated employment is more valued than non-employment, segregated employment, facility-based employment, or day habilitation in terms of employment outcomes."[3] Additionally, in 2005, a report issued by the Oregon Council on Developmental Disabilities noted a "renewed interest in, and demand for, supported employment services," and found that "[t]o respond to this demand, the state must reestablish expectations and capacity for supported employment for persons with developmental disabilities."[4]

We agree with these conclusions and observations. As a result of Oregon's actions and policies thousands of people with intellectual and developmental disabilities are denied the opportunity to "move proudly into the economic mainstream of American life," one of the primary purposes of the ADA.[5] Oregon has long recognized that "meaningful employment" for

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[2] Washington Initiative for Supported Employment, Community Leadership for Employment First in Oregon: A Call to Action 6 (2010), available at: http://www.dhs.state.or.us/dd/supp_emp/docs/wise.pdf.

[3] Id. at 7.

[4] Janet Steveley, Supported Employment for Oregonians with Developmental Disabilities: Recommendations for Action 2 (Nov. 2005), available at: http://www.oregon.gov/DHS/vr/eep/se_dd_stevely.doc.

[5] See Remarks of President George H.W. Bush at the Signing of the Americans with Disabilities Act (Jul. 26, 1990), available at: http://www.eeoc.gov/eeoc/history/35th/videos/ada_signing_text.html.

persons with disabilities is a necessary and important state objective,[6] and that "[a]ll persons regardless of any disability have the right to live their lives with dignity and to participate in society and all state programs to the fullest extent possible."[7] Oregon has recognized that employment is "the key to full citizenship" and that "all people with intellectual and developmental disabilities should be provided the opportunity to work ... and to not live in the shadow as marginalized citizens, but to be fully embraced by their community."[8]

Despite these policy statements, thousands of individuals with intellectual and developmental disabilities are unnecessarily placed in sheltered workshops. While many in sheltered workshops can and want to work in the community, the State has denied or failed to provide such persons with services and supports that would enable them to engage in meaningful employment in the community. The State has dedicated significantly more resources to sheltered workshops than it has to supported employment services and supports in the community. As the experience of Oregon and other states has demonstrated, persons with intellectual and developmental disabilities can be accommodated in integrated employment. As long as these discriminatory policies and practices remain, the interests, talents, skills and contributions of such persons remain largely invisible to and untapped by the job market, and the greater community is deprived of their potential contributions.

III. INVESTIGATION

On October 11, 2011, we notified the State that we were opening an investigation into whether the State's reliance on sheltered workshops violated Title II of the ADA. As part of this investigation, we participated in two in-person meetings with State officials: one on October 27, 2011 and one on December 5, 2011. In the second meeting, we met with Erin Kelley-Siel, Director of the Oregon Department of Human Services (DHS), Mary Lee Fay, Administrator of the Oregon Office of Developmental Disabilities Services (ODDS), and Mike Maley, Director of Community Services for ODDS. At this meeting, Ms. Fay and Mr. Maley presented information and data to us concerning the State's provision of employment services and answered all of our questions.[9] Thereafter, on January 23, 2012, we requested documents and data from the State,

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[6] Or. Rev. Stat. §§ 410.010, 410.020(9) (2011); see also Community Leadership for Employment First in Oregon: A Call to Action at 31, App. 1, Office of Developmental Disability Services State Policy on: Employment for Working Age Individuals ("Meaningful work can be accomplished regardless of disability.").

[7] Or. Rev. Stat. § 410.710(1).

[8] Community Leadership for Employment First in Oregon: A Call to Action at 9.

[9] The State requested, and the United States agreed, that any communications made during this meeting would be treated as inadmissible pursuant to Federal Rule of Evidence 408. Accordingly, the United States will not seek to admit any statements made or documents obtained during this meeting in any proceeding. Nevertheless, in conducting our investigation and reaching our conclusions, we carefully considered the information provided by Director Kelley-Siel, Ms. Fay, and Mr. Maley. The information provided during this meeting also assisted us in requesting additional information, documents, and data from the State and other sources.

which we received in March and April 2012. These documents included the State's Employment Outcomes System database, which the State has used to track the placement and other employment data for persons with intellectual and developmental disabilities on the State's Medicaid Comprehensive Waiver.

In April 2012, our staff, along with a consulting expert, conducted on-site visits to employment services providers in Oregon, including sheltered workshops, group employment programs, and supported employment programs. The programs we toured were geographically and demographically diverse. During these visits, we interviewed staff, toured programs, and spoke with participants. We also met with and interviewed other providers, stakeholders and other knowledgeable individuals concerning Oregon's employment services system for persons with intellectual and developmental disabilities.

IV. BACKGROUND

DHS oversees the delivery and administration of programs and services for individuals with intellectual and developmental disabilities.[10] DHS has two sub-agencies that are responsible for the provision of employment and vocational services: the Office of Vocational Rehabilitation Services (OVRS) and the Office of Developmental Disability Services (ODDS) within the Seniors and People with Disabilities (SPD) Division.[11] Oregon's employment and vocational services system for individuals with intellectual and developmental disabilities begins, for most individuals, with an initial system of employment programs and services provided by OVRS and continues via ODDS.

Vocational rehabilitation services are focused on initial job readiness and placement services and are time-limited to a maximum of eighteen months.[12] To be eligible for OVRS services, individuals must have a physical or mental impairment that "constitutes or results in a substantial impediment to employment," and a qualified vocational rehabilitation counselor must determine that an individual requires vocational rehabilitation services to obtain or maintain a job.[13] A vocational assessment determines eligibility for services and is used to formulate an Individual Plan of Employment (IPE) with identified goals for an individual's vocational and employment services. Under Oregon regulations, eligibility determinations must be made within sixty days.[14] If a person is determined eligible for OVRS services, an IPE must be developed and signed within 180 days.[15]

After the expiration of eighteen months, individuals may continue to receive vocational and employment services through ODDS via one of the two Medicaid Home and Community Based Services waiver programs, which serve persons with intellectual and developmental

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[10] Or. Rev. Stat. § 409.010(2)(d)(3).

[11] Or. Rev Stat. §§ 410.010, 410.020(1), (2), (9), 410.060(2); 410.070.

[12] 34 C.F.R. § 363.6(c)(2)(iv)(iii) (2011); Or. Admin. R. § 582-001-0010(45)(a) (2012).

[13] Or. Admin. R. § 582-050-0020.

[14] Or. Admin. R. § 582-050-0000(5).

[15] Or. Admin. R. § 582-050-0000(7).

disabilities who would meet an institutional level of care. The Comprehensive Waiver provides both residential and non-residential services and support. For the Comprehensive Waiver, DHS delegates eligibility determinations and development of Individual Support Plans (ISP) to counties, who assign "service coordinators" to each participant. The Support Services Waiver provides day services only. ODDS administers service coordination for this waiver program by contracting with regional "brokerages" that assign a "personal agent" for each participant. Both waiver programs provide employment and vocational services.

Under these programs, Oregon provides employment and vocational services to persons with disabilities in three types of settings: "sheltered" or "facility-based" employment, "group supported employment" or "supported employment – crew/enclave," and "individual supported employment." Oregon has defined "sheltered employment" as follows:

> Supports typically take place in settings such as sheltered workshops in which there is **little or no contact with other workers without disabilities.** Individuals are paid a wage in exchange for their production-related activities. Sheltered employment includes crews or enclaves with 9 or more workers with disabilities on any one shift.[16]

Supported employment, by contrast, is defined as follows:

> Paid employment in a setting providing opportunities to work with and around persons without disabilities. Includes 1:1 intermittent monitoring, coaching and/or intervention at a public or private sector worksite, using and enhancing natural business and co-worker supports where possible. Provides or arranges for personal care as needed.[17]

Finally, "group supported employment" or "crew/enclave" supported employment is defined as "[a] small group of 2 to 8 individuals with developmental disabilities working in the community under the supervision of a provider agency."[18]

V. FINDINGS

We conclude that the State fails to provide employment and vocational services to persons with intellectual and developmental disabilities in the most integrated setting appropriate to their needs. Under Title II of the ADA, 42 U.S.C. § 12132, a public entity must "administer services, programs, and activities in the most integrated setting appropriate to the needs of

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[16] See DHS/DOJ_001713 (emphasis in original).

[17] Service Definitions, Employment and Community Inclusion Services (Mar. 29, 2012) (DOJ Bates No. OR05321). Regulations governing federally-assisted vocational services similarly distinguish between integrated and segregated employment settings. See 34 CFR § 361.5(b)(16) & (19) (defining "employment outcome" as "entering or retaining full-time or, if appropriate, part-time competitive employment … in the integrated labor market, supported employment, or any other type of employment in an integrated setting" and "extended employment" as, inter alia, "work in a non-integrated or sheltered setting").

[18] See DHS/DOJ_001713.

qualified individuals with disabilities." 28 C.F.R. § 35.130(d).[19] The "most integrated setting" is one that "enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible[.]" Id. App. A. at 572. As shown below, and as recognized by the State, sheltered workshops fail to provide this required level of integration and interaction between persons with and without disabilities.

Congress enacted the ADA to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities," 42 U.S.C. § 12101(b)(1), including, specifically, "segregation" and actions that prevent persons with disabilities from "fully participat[ing] in all aspects of society." Id. §§ 12101(a)(1), (5). Furthermore, Congress found that "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals." Id. § 12101(a)(7).

Title II of the Americans with Disabilities Act states as follows:

> [N]o qualified 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. Title II is part of the ADA's clear and comprehensive national mandate to end the segregation of persons with disabilities in virtually all aspects of American life. As Congress found, "[i]ntegration is fundamental to the purposes of the ADA. Provision of segregated accommodations and services relegate persons with disabilities to second-class citizen status." See H.R. Rep. No. 485, at 26 (1990), reprinted in 1990 U.S.C.C.A.N. 445, 449; see also 28 C.F.R. Pt. 35, App. B (same). See also Helen L. v. DiDario, 46 F.3d 325, 335 (3d Cir. 1995) ("The ADA is intended to insure that qualified individuals receive services in a manner consistent with basic human dignity rather than a manner which shunts them aside, hides, and ignores them.").

In Olmstead, 527 U.S. at 587, the Supreme Court held that public entities are required to provide community-based services to persons with disabilities when (a) such services are appropriate; (b) the affected persons do not oppose community-based treatment, and (c) community services can be reasonably accommodated, taking into account the resources available to the entity and the needs of other persons with disabilities. Id. at 607. In so holding, the Court explained that "institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life." Id. at 600. It also recognized the harm caused by unnecessary segregation: "confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment." Id. at 601.

The Olmstead analysis applies to segregated employment programs such as sheltered workshops. In Lane v. Kitzhaber, persons with intellectual or developmental disabilities who are in, or who have been referred to, Oregon sheltered workshops sued under Title II of the ADA

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[19] Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), contains a similar requirement. See 28 C.F.R. § 41.51(d).

and Olmstead and alleged that the State had failed to provide them with employment and vocational services in the most integrated setting appropriate to their needs, namely supported employment. The Court found that the "broad language and remedial purposes of the ADA" support the conclusion that the integration mandate applies to employment services.[20] The court additionally declined to find that the application of the Supreme Court's holding in Olmstead was limited to residential settings and "conclude[d] that the risk of institutionalization addressed in ... Olmstead ... includes segregation in the employment setting."[21]

A. Sheltered Workshops are Segregated Settings

Sheltered workshops do not provide persons with disabilities the opportunity to interact with non-disabled persons to "the fullest extent possible." See 28 C.F.R. § 35.130(d), App. A. at 572. The State's own documents define sheltered workshops as providing "little or no contact with other workers without disabilities."[22] Other State data indicate this lack of integration: in September 2009, the State reported that over 85% of persons in sheltered workshops had fewer than five persons without disabilities in their immediate environment, with 41% reporting no one without a disability. By contrast, over 90% of persons in integrated employment had persons without disabilities in their immediate environment, with over 46% reporting six or more such individuals.[23]

Our observations of sheltered workshops throughout the State as part of this investigation confirmed this conclusion. While staff and management of these facilities were clearly caring

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[20] Lane v. Kitzhaber, No. 3:12-cv-00138-ST, 2012 U.S. Dist. LEXIS 69218, *20 (D. Or. May 17, 2012).

[21] Id. at 11-12. See also "Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C." 3 (June 22, 2011) (emphasis added), available at: www.ada.gov/olmstead/q&a_olmstead.htm. The Centers for Medicare and Medicaid Services (CMS), which oversees Medicaid, has also recognized Olmstead's application to non-residential employment and vocational services provided under Medicaid. CMS has stated that States "have obligations pursuant to ... the Supreme Court's Olmstead decision" requiring that "an individual's plan of care regarding employment services should be constructed in a manner that ... ensures provision of services in the most integrated setting appropriate." CMCS Informational Bulletin 5 (Sept. 16, 2011) (emphasis added), available at: www.cms.gov/CMCSBulletins/download/CIB-9-16-11.pdf. In addition, since January 22, 2001, the Rehabilitative Services Administration has prohibited federal rehabilitation funds from being used for long-term placement of persons with disabilities in "extended employment," meaning sheltered workshops and other segregated settings. See 66 Fed. Reg. 7249; see also 29 U.S.C. § 720(a)(1), (3)(C) (Title I of the Rehabilitation Act) ("Congress finds that-- ... Individuals with disabilities must be provided the opportunities to obtain gainful employment in integrated settings."); Rehabilitation Services Administration, Technical Assistance Circular, 06-01 (November 21, 2005), available at: www2.ed.gov/policy/speced/guid/rsa/tac-06-01.doc.

[22] See DHS/DOJ_001713.

[23] Semi-Annual Employment Outcomes System Evaluation Report, Sept. 2009, at 19 (DHS/DOJ_001770).

and professional, the workshops we observed nevertheless were structured and functioned much like other institutions, in that they delivered employment and vocational services in a manner that did not allow persons served to interact with non-disabled persons other than staff. Cf. Benjamin v. Dep't of Pub. Welfare, 768 F. Supp. 2d 747, 750 (M.D. Pa. 2011) (adopting plaintiffs' finding of fact that they are segregated because, *inter alia*, they 'do not have as much opportunity to interact with a wide range of people....'"). See also Disability Advocates Inc. (DAI) v. Paterson, 653 F. Supp. 2d 184, 200-07 (E.D.N.Y. 2009) *vacated on other grounds sub nom.* DAI v. New York Coalition for Quality Assisted Living, 2012 WL 1143588 (2d Cir. April 6, 2012) (describing characteristics of institutions to include, *inter alia*, large numbers of individuals with disabilities congregated together with few opportunities to interact with individuals outside of the institution).

Persons in many sheltered workshops perform highly repetitive, manual tasks, such as folding, sorting, and bagging, in shared spaces occupied only by other persons with disabilities. Workshop participants often perform their tasks on a uniform, fixed shift schedule with designated breaks. Typically, the same disabled individuals who perform tasks on a given shift also break together—whether by eating, talking, or sleeping—in areas just off to the side of the appointed work space, without ever leaving the workshop floor or the facility itself. DAI, 653 F.Supp.2d at 199-201 (institutional characteristics include, *inter alia*, inflexible routines and regimented daily activities with little autonomy or being subject to an "extensive and significant set of rules" limiting individuals' freedom to make choices about how they spend their time.).

Individuals' limited choice or autonomy over the tasks that they perform also increases the likelihood of their continued segregation. Workshop tasks are often required to be performed irrespective of a particular individuals' preference, dexterity, skill, or acumen for the process, as all participants typically rotate across the workshop floor to all of a workshop's various work stations. During our investigation, we observed one workshop participant with multiple disabilities whose limited dexterity and muscular control made him appear to struggle for an extended length of time to tie a single loop in a nylon cord, the task that the participants at his station were required to perform over and over. While this person may have excelled at other jobs in which his physical limitations were not relevant, he was likely rendered "less productive" solely due to his physical inability to perform the task assigned to him at the same level as a nondisabled person.

Indeed, the State's own data makes clear that sheltered workshops by and large do not provide short-term training to prepare persons with intellectual or developmental disabilities for integrated employment; rather, for most participants, they represent a permanent employment placement. According to the State's documents, the average duration of a sheltered workshop placement in September 2009 was 11.72 years.[24] A number of sheltered workshop providers told us that some individuals have been in their workshops for as long as thirty years.

Our expert consultant also noted a pattern of "segregation within segregation" in some workshops, in which less productive persons were grouped together and separated from more productive persons. Less-productive persons were either not working or were performing more menial tasks that required less supervision and training. In one example, we saw a group of workers who appeared to have greater physical needs sorting trash at a recycling facility. Workers who were more productive, by contrast, tended to perform different and sometimes

[24] Id. at 11.

more complex tasks in other sections of the workshop. Likewise, in the few workshops we saw that also employed non-disabled workers, these workers tended to work on different tasks, and were, therefore, often apart from persons with disabilities who were less productive or had more severe disabilities.[25]

The physical features of many sheltered workshops were also institutional in nature. Many workshops, like other institutional facilities, contain separate office space, conference rooms, lunch rooms and restrooms for management and staff, apart from the workshop space. In many workshops, individuals with disabilities sit at long cafeteria-style tables in large industrial facilities, with little natural light. While some competitive jobs may also have work environments that resemble an industrial plant, for workshop participants this appears to be the sole type of workplace setting provided, and is not representative of many other workplace settings in the community. Furthermore, unlike most workplaces, many sheltered workshops lack desks or personal spaces where workers may keep personal items. Several staff members are usually on the floor of the workshop at any given time supervising individuals in their completion of manual tasks and monitoring production. DAI, 653 F.Supp.2d at 199-201 (institutional characteristics evidencing segregation include, *inter alia*, the physical layout of a facility, furnishings, and general lack of privacy and lack of private spaces.).

The business model and location of sheltered workshops further inhibits the integration of persons with disabilities. Due to the large size of most sheltered workshops and their need for space, many are located in industrial parks or in areas set off from other businesses and public transportation. Consequently, individuals with disabilities cannot always use mainline transportation to get to and from their homes to the workshops, thereby requiring the provider to transport individuals to and from work. This system accordingly perpetuates the segregation and isolation of workshop participants. Furthermore, persons in workshops cannot easily leave the facility to go to lunch or for a break. Again, while this may also be the case for some individual jobs, it is not representative of most jobs in the marketplace.

Being unnecessarily segregated in a sheltered workshop setting can impose negative consequences upon people with disabilities, in addition to individuals' isolation from non-disabled peers, including stigmatization and a lack of economic independence. Sheltered workshop participants earn extremely low wages when compared to persons with disabilities in integrated employment.[26] According to data provided by the State in response to our

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[25] It is important to emphasize that a person's level of productivity in the workshop is not necessarily commensurate with severity of their intellectual or developmental disabilities. For example, we observed a number of persons who had difficulty performing their assigned task due to physical limitations such as limited hand or motor coordination. Conversely, we observed individuals with significant physical limitations working productively in community settings, either because their physical limitations were not a significant barrier to their job performance or because their physical limitations had been accommodated by their employer. Such accommodations or tailoring of jobs to meet individual needs and skills may not be possible in a sheltered workshop where everyone must perform one of the same small group of tasks to fulfill the facility's contracts.

[26] Under the 1938 Fair Labor Standards Act (FLSA), employers of persons with disabilities, including sheltered workshops, may pay below minimum wage if they have obtained "special certificates" issued for the purpose of "prevent[ing] curtailment of opportunities for employment" for persons with disabilities. See 29 U.S.C. § 214(c). However, this does not

investigation, the average hourly wage for sheltered workshop participants is currently $3.72. Over 52% of participants earn less than $3.00 per hour, and some earn only a few cents per hour.[27] By contrast, the overwhelming majority of persons with disabilities in individual supported employment earn Oregon's minimum wage of $8.80 or above.[28] As the State's own reports have recognized, "[m]inimum or competitive wages" are "the goal of integrated employment."[29] Furthermore, the satisfaction achieved by persons with disabilities for earning the same compensation as persons without disabilities who perform similar work is a major reason why integrated employment is "more valued" than segregated employment.[30] Moreover, minimum or competitive wages promote the economic independence of persons with intellectual disabilities, which in turn can benefit the State financially and ensure that such individuals have the resources necessary to remain and thrive in community settings. At one supported employment site we visited, we met a woman with intellectual disabilities whose work skills had progressed to the point that she now worked enough hours to qualify for the employer's health plan, and no longer had to rely on the State for health insurance coverage. She also was promoted and was asked to advance to more complex tasks at work, something rarely

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relieve States of their obligation to comply with the ADA's integration regulation with regard to the provision of employment and vocational services.

[27] Id. Oregon's minimum wage has been adjusted for inflation annually since 2003. See Or. Rev. Stat. §§ 653.025(1)(d)-(e). The current minimum wage is $8.80 per hour. See http://www.oregon.gov/BOLI/TA/T_FAQ_Min-wage_2012.shtml.

[28] Under the FLSA, workers are paid based on their measured productivity when compared to a non-disabled worker performing similar work. See 29 U.S.C. § 214(c)(1)-(2). Thus, for a job that is compensated at Oregon's minimum wage of $8.80 per hour, a disabled worker who is determined to be half as productive as a non-disabled worker would earn $4.40 per hour. The employer must measure the productivity of disabled workers every six months. Id. § 214(c)(2)(A). Based on interviews with workshop staff, we found that this measurement is relatively straightforward for jobs involving discrete assembly tasks, in which productivity can be measured by the number of items completed or assembled. However, for jobs that do not result in such measurable outputs, such as operation of machinery, a particular worker's level of productivity is more subjective and more difficult to measure. Furthermore, in workshops that employ non-disabled workers, there is often a differential compensation structure for these non-disabled workers that reinforces the pay disparity with disabled workers doing the same or similar work in the sheltered workshop. While, absent extraordinary circumstances, non-disabled workers will be paid minimum wage or higher regardless of their productivity during a particular period, disabled workers – even those who are highly productive – must regularly demonstrate and maintain their productivity in order to keep earning at or near minimum wage, with little to no allowance for an off-day. Such disabled workers would generally not be subject to this analysis if they worked in competitive employment.

[29] Community Leadership for Employment First in Oregon: A Call to Action at 7. See also Stevely, Supported Employment for Oregonians with Disabilities: Recommendations for Action (Nov. 2005) at 4 ("The key features of supported employment are ... [w]ages commensurate to wages paid to for comparable work performed by someone without a disability.").

[30] Community Leadership for Employment First in Oregon: A Call to Action at 7 ("Integrated employment is more valued than non-employment, segregated employment, facility-based employment, or day habilitation in terms of employment outcomes.").

experienced by persons in sheltered workshops. Further, after enjoying the independence and increased wages from her job in the community, this woman was able to and selected to move into her own apartment.

B. The Majority of Oregon's Employment and Vocational Services Are Delivered in Sheltered Workshops

Although the State has recognized that "employment opportunities in fully integrated work settings should be the first and priority option explored in the service planning for working-age adults with developmental disabilities,"[31] the available evidence indicates that only a small minority of persons with intellectual and developmental disabilities in Oregon can access supported employment services and, consequently, have the opportunity to work in integrated employment. According to data provided by the State in response to this investigation, as of March 2012, of 2,691 persons receiving employment and vocational services, 1,642 – 61% – received at least some of those services in sheltered workshops. By contrast, only 422, or less than 16%, of these persons received services at any time in individual supported employment settings.

Data provided by the State on the number of hours expended in each setting – which, under the Comprehensive waiver, determines or will determine the amount of State funds dedicated to each service setting – also demonstrate a stark differential between resources dedicated for integrated and segregated employment.[32] Of a total of 118,311 hours expended on employment and vocational services, only 11,789 of those hours were in integrated, individual employment settings, or less than 10%. On the other hand, 67,640 hours, or 57%, of these hours were expended in sheltered workshops. Sheltered workshops clearly constitute the vast majority of the State's expenditures and resources for employment services for persons with intellectual and developmental disabilities.

C. Many Persons in Sheltered Workshops Could Be Served In Individual Supported Employment

Both in Oregon and nationally, it has been recognized that most, if not all, persons with intellectual and developmental disabilities are capable of working in the community. As early as 1987, one federal court recognized that "[w]hereas sheltered workshops and work activity centers were previously considered the only possible place in which to employ people with disabling conditions, now many professionals consider these places the last resort when every other employment option has failed." Homeward Bound, Inc. v. Hissom Mem. Ctr., No. 85-C-437-E, 1987 U.S. Dist. LEXIS 16866, at *43 (N.D. Okla. Jul. 24, 1987). The report underlying Oregon's Employment First Policy states: "Everyone can work and there is a job for everyone. Our job is to be creative and tenacious in providing support."[33] In addition, available data

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[31] Id. at 32, App. 1, Office of Developmental Disability Services State Policy on: Employment for Working Age Individuals.

[32] Both State officials and numerous providers informed us that the ODDS is revising its reimbursement system for services covered under the Comprehensive Waiver. Although not finalized, the new system is expected to compensate providers based on the number of hours of service provided.

[33] Community Leadership for Employment First in Oregon: A Call to Action at 3.

indicate that Oregon has historically served a much larger percentage of its population of persons with intellectual and developmental disabilities in integrated employment settings than it does today, further confirming the conclusion that many persons in sheltered workshops do not need to be served there.[34]

Our investigation confirms this conclusion. Our consulting expert observed and/or spoke with hundreds of sheltered workshop participants and noted that they have disabilities similar to persons being served successfully in supported employment programs in Oregon. She did not find that the overall level of need of persons in sheltered workshops rendered them incapable of working in the community. For example, she estimated that of the total number of individuals we observed in sheltered workshops, less than 20% used a wheelchair. By contrast, we observed a supported employment program where nearly all participants had both significant mobility impairments and intellectual or developmental disabilities. Nevertheless, this agency had successfully trained and placed its clients in a number of jobs in the community and had taught them to use mainline transit, as opposed to paratransit, to get to and from work. Many providers of both sheltered workshops and supported employment told us that they believed that most persons with intellectual and developmental disabilities in workshops could, with appropriate supports and services, be served in the community.

In addition, we uncovered no evidence that persons with intellectual and developmental disabilities in sheltered workshops would oppose supported employment services, or working in an individual job, if given the choice and opportunity to do so. See Olmstead, 527 U.S. at 607. However, our investigation revealed, and our expert concluded, that few persons are provided a meaningful and informed choice of supported employment services. For example, one sheltered workshop participant told us that she was trained to wash tables and dishes as a volunteer while in high school, and that she currently wants to be a greeter in a retail store, but no one, including her case manager, has spoken with her about securing the services necessary for community employment. She called her work assembling syringes in the workshop "boring." Another person who has been in the workshop for ten years putting labels on bags said that she wants to work in the community, preferably with children or in the food service industry, and wanted to earn minimum wage so that she could independently select (and pay for) recreational activities in the community. However, neither her case manager nor anyone else had discussed community employment with her. Another sheltered workshop participant we met with has been in a workshop for over twenty-five years. He told us that, every year, he has expressed his desire to work in the community during his ISP team meetings. Nevertheless, he knew of no plan to secure supported employment services for him.

D. Oregon Administers Its Employment and Vocational Services System in a Manner that Segregates Persons with Disabilities in Sheltered Workshops

Under the ADA, states may not utilize "criteria or methods of administration" that subject persons with disabilities to illegal discrimination, 28 C.F.R. § 35.130(b), including, inter alia, unnecessary segregation in sheltered workshops. Based on our investigation, we have concluded that the State is violating this provision with regard to the placement of persons with intellectual and developmental disabilities in sheltered workshops.

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[34] See John Butterworth et al., State Data: The National Report on Employment Services and Outcomes (Institute for Community Inclusion, University of Massachusetts-Boston Winter 2011) at 281.

While Oregon provides supported employment services to some persons with disabilities, it has not developed adequate capacity to provide these services to all persons in sheltered workshops, or who are in or at risk of entering sheltered workshops, who could benefit from them and would not oppose being served in the community. See Olmstead, 527 U.S. at 587. Many employment services providers we interviewed identified a lack of resources to provide job coaches, job developers, behavioral supports, and other necessary services and supports as a barrier to serving workshop participants in the community. Providers also expressed uncertainty as to whether new rates being developed under the State's Comprehensive waiver would allow them the resources to develop such capacity. During our investigation, we were unable to discern any meaningful or effective financial incentive by the State to encourage the movement of persons with intellectual or developmental disabilities out of sheltered workshops and into supported employment services. Furthermore, in addition to the lack of supported employment services, our investigation revealed a number of policies, practices or omissions by the State that further the unnecessary segregation of persons with intellectual and developmental disabilities in sheltered workshops, as described below.

1. Failure to Utilize OVRS Services to Encourage Supported Employment for Persons with Intellectual and Developmental Disabilities

OVRS is the first resource available to persons with intellectual and developmental disabilities seeking employment services. One supported employment provider told us that OVRS can be an important source of funding for job training and other vocational services in integrated community settings. Nevertheless, our interviews with providers and stakeholders indicated that, overall, OVRS does not use its resources to further integrated employment for persons with intellectual and developmental disabilities. Instead, it was reported, OVRS often screens out such persons by classifying them as too severely disabled to benefit from employment services or succeed in a job setting. Accordingly, sheltered workshops often become the default setting for many people with intellectual and developmental disabilities who have been found ineligible for OVRS services.

OVRS's eligibility determination does not appear to be based on a professionally appropriate assessment of the needs and skills of persons with intellectual disabilities. The OVRS assessment tool requires that applicants for services demonstrate that they are "motivated, reliable and dependable," and staff must verify an applicant's "motivation."[35] Virtually all of the providers and stakeholders we spoke with stated that this process is wholly inappropriate for persons with intellectual and developmental disabilities because most such persons cannot, as a result of their disabilities and concomitant limited verbal skills, express this motivation in the manner contemplated by OVRS' assessment tool. This process, which has been the subject of numerous complaints, effectively screens out persons with intellectual and developmental disabilities from OVRS' resources and increases the likelihood that such individuals will enter a sheltered workshop.

Furthermore, the State's lack of investment in supported employment services also may discourage OVRS from assisting persons with intellectual and developmental disabilities from finding competitive employment. Because OVRS is evaluated based on the number of

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[35] See "Enhancing Employment Outcomes Project," www.dhs.state.or.us/tools/vr/training/2008/2008-enc-emp-outcm.ppt (August 2008).

successful employment outcomes for persons it serves, and because sheltered work is not, under federal law, considered a successful employment outcome,[36] it is simply easier for OVRS to find a person ineligible than to attempt to find the person a job, which is rendered more difficult by the lack of job coaches, job developers and other supports and services among service providers. While such a practice is not universal, many providers reported their belief that OVRS often declines to find persons with intellectual or developmental disabilities eligible because they are concerned about whether a successful employment outcome is possible. One supported employment provider told us that most of the persons they served had been determined ineligible for OVRS services, reinforcing the fact that such a determination does not indicate whether a person can or cannot work in integrated employment.

The failure of OVRS to serve persons with intellectual or developmental disabilities who are entering vocational services for the first time – including persons graduating from or leaving public schools – can have lasting consequences. We heard from numerous providers and stakeholders that it is common for individuals to transition to Medicaid-funded supported employment after they have fully utilized OVRS resources, like job coaches and job developers, to locate and identify supported employment opportunities in the community. However, we also learned that individuals who have been found ineligible for OVRS services are often placed immediately in sheltered workshops due to a lack of available, immediate resources for supported employment services. As stated above, once placed in a sheltered workshop, persons tend to remain there indefinitely.

Moreover, even though federal law prohibits OVRS from using federal funds for long-term placements in sheltered workshops,[37] OVRS nevertheless utilizes sheltered workshops to perform assessments of persons with disabilities. These assessments are often conducted not in the community but in the workshop itself, where it may be difficult to gauge a person's ability to function in an integrated work setting. These assessments often lead to placement in the very workshop that assessed the person. In fact, one sheltered workshop provider informed us that many individuals sent to the workshop for assessment by OVRS arrive with the impression that they have been sent there for placement.

2. Failure of Case Managers to Interact with Supported Employment Providers to Identify and Locate Employment Opportunities

Our investigation revealed little apparent interaction between vocational rehabilitation counselors, service coordinators, and personal agents with supported employment providers to assist individuals in transitioning out of sheltered workshops. Many providers told us that they were rarely, if ever, contacted by these case managers to find out about their services or available employment opportunities. In fact, one supported employment provider told us that her organization recently became aware of three jobs in the community that were available for persons with intellectual and developmental disabilities receiving supported employment services. The provider contacted case workers and agencies in the area to see if they had any clients – whether in sheltered workshops or at risk of such placement – who might be interested in these jobs. The provider, however, received no response. As a result, no one was referred to these jobs, and the jobs were eventually lost.

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[36] See 66 Fed. Reg. 7249, 7250 (Jan. 22, 2001) (codified at 34 C.F.R. §361).

[37] Id.

E. Persons with Disabilities Exiting the School System Are at Risk of Placement in Sheltered Workshops

As described above, due to the State's overreliance on segregated sheltered workshops and concomitant failure to develop sufficient supported employment services, many youth with intellectual and developmental disabilities are at risk of entering a sheltered workshop. See M.R. v. Dreyfus, 663 F.3d 1100, 1116 (9th Cir. 2011) (recognizing claim under Olmstead for persons at risk of segregation). According to the stakeholders and others we interviewed, the State, via its vocational rehabilitation counselors, service coordinators, and personal agents, fail to present transition-age students with intellectual and developmental disabilities with viable alternatives to sheltered work to receive employment services. Students in the system are also not identified early enough by either school transition specialists or vocational rehabilitation counselors as needing transition services to prepare them for transitions into integrated work.

The State has no formal plan to transition students to individual supported employment from school. Although DHS and OVRS entered into a Memorandum of Understanding with the Oregon Department of Education in August 2011 that seeks to increase the number of students with disabilities transitioning from school to work, it is nonspecific with regard to achieving this goal and lacks clearly defined benchmarks for transitioning students into supported employment.[38]

Numerous stakeholders stated that a referral from high school to a sheltered workshop continues to be the most common outcome for transition age youth who seek employment services in Oregon. We also received reports that some school districts in Oregon simulate workshop activities in order to transition students with disabilities into workshops. Other school districts have placed students in workshops as part of their transition planning for such students, which often leads to permanent placement in the workshop. At least one sheltered workshop grants a number of high school students per year "scholarships" to work in the facility prior to transitioning from school. In addition, as described above, many students are referred from schools to sheltered workshops for assessments to determine their eligibility for OVRS services. These actions place students with disabilities at risk of unnecessary placement in sheltered workshops and run directly counter to the goals of the MOU and Oregon's policy on employment. Nevertheless, such actions are not specifically addressed in the MOU.

F. Serving Persons with Disabilities in Integrated Employment Settings Can Be Reasonably Accommodated

Providing services to sheltered workshop participants with intellectual and developmental disabilities in community-based employment settings can be reasonably accommodated. The types of services needed to support people with intellectual and developmental disabilities in community-based employment settings already exist in Oregon's employment service system. The State could redirect Medicaid and other funds that it already spends to support people in sheltered workshops to provide services in integrated employment settings. Further, many of the services provided to sheltered workshop participants, including job coaching, job training, job

[38] See Memorandum of Understanding, Oregon DOE/ OVRS/ ODDS, available at: www.ode.state.or.us.

assessment, job oversight and supervision, environmental modification, and transportation, are the same services that individuals would need in the community in integrated employment.

The State, as set forth in its Employment First Policy, has aspired to make "employment opportunities in fully integrated work settings... the first and priority option explored in service planning for working age adults with developmental disabilities."[39] As the State already provides employment services in integrated settings to some individuals in Oregon,[40] expanding the availability of services in fully integrated work settings to serve others who are unnecessarily segregated or at risk of unnecessary segregation in sheltered workshops is a reasonable modification to the State's employment service system. DAI, 598 F.Supp.2d at 335 *vacated on other grounds sub nom.* DAI, 2012 WL 1143588 ("Where individuals with disabilities seek to receive services in a more integrated setting- and the state *already provides* services to others with disabilities in that setting- assessing and moving the particular plaintiffs to that setting, in and of itself is not a 'fundamental alteration.'"). See also Messier v. Southbury Training School, 562 F.Supp.2d 294, 344-345 (noting that the Defendant state agency's "public commitment to further enhancing a system of community placement" was "entirely inconsistent with its fundamental alteration claim.").

Accordingly, redirecting services from sheltered workshops to supported employment settings in the community for those individuals who are unnecessarily segregated will not be a fundamental alteration of Oregon's employment service system, and, instead, is a reasonable modification.[41]

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[39] Community Leadership for Employment First in Oregon: A Call to Action at 32, App. 1, Office of Developmental Disability Services State Policy on: Employment for Working Age Individuals.

[40] *See Supra*, Part B (stating data produced by the State of Oregon demonstrates that in March 2012, 16% of individuals received services at any time in individual supported employment settings).

[41] One study found that in Oregon, persons with intellectual or developmental disabilities in supported employment returned $1.61 for every dollar spent on them. Robert E. Cimera, "National Cost Efficiency of Supported Employees with Intellectual Disabilities: 2002 to 2007," Am. J. of Intellectual and Developmental Disabilities, vol. 115, no. 1, at 26 (Jan. 2010). Additionally, because supported employment helps persons with intellectual and developmental disabilities to secure competitive employment with higher wages and benefits, such services may assist at least some persons in becoming less dependent on public benefits, including state-funded health insurance and transportation subsidies. Id. at 23. Also, for some individuals, the amount of required support is likely to decrease over time, thus lowering costs over the longer term. Id. at 27. Conversely, the per-person cost of sheltered workshops tends to either stay the same or increase over time. Id.

VI. RECOMMENDED REMEDIAL MEASURES

To remedy the deficiencies discussed above and to protect the civil rights of individuals with intellectual and developmental disabilities who receive services in sheltered workshops, the State should promptly implement the minimum remedial measures set forth below.

A. Serving Individuals with Intellectual and Developmental Disabilities in Integrated Employment Settings

The State must develop sufficient supported employment services to enable those who are unnecessarily segregated in sheltered workshops to receive services in the most integrated setting appropriate to their needs. Supported employment services must include the placement of individuals with intellectual and developmental disabilities in individual integrated employment settings in the community, alongside non-disabled co-workers, customers, and peers, where individuals earn competitive wages, and have access to the services and supports that they need to fulfill the requirements of and to retain a job.

The State must develop an effective plan to appropriately serve people with intellectual and developmental disabilities in integrated employment settings when they so choose. Such a plan should include statewide directives sufficient to, among other things, substantially increase the number of persons appropriately offered supported employment and concomitantly decrease the number of persons unnecessarily placed in sheltered workshops; ensure that youth in schools or transitioning from school are provided supported employment services and will not be unnecessarily placed in sheltered workshop settings; and ensure that vocational assessments and OVRS policies and practices encourage supported employment and do not lead to unnecessary determinations of ineligibility or unnecessary placements in sheltered workshops.

The State should also develop policies and procedures to implement these statewide directives, including conditioning funding on the achievement of numerical targets and implementation timelines.

The State should incrementally shift its current funding from sheltered workshops to supported employment services.

B. Discharge and Transition Planning

The State must implement an effective plan to transition people with intellectual and developmental disabilities unnecessarily segregated in sheltered workshops to supported employment. The plan should include requirements for effective outreach, early and regular assessment, information, and transition support for people currently in sheltered workshops. Discharge assessments should be based on the principle that with sufficient services and supports, individuals with intellectual and developmental disabilities can work in integrated community settings.

No one who is qualified for supported employment should be placed into a sheltered workshop, unless after being fully informed, he or she declines the opportunity to receive services in integrated supported employment.

VII. CONCLUSION

Please note that this findings letter is a public document. It will be posted on the Civil Rights Division=s website.

We hope to continue working with Oregon in an amicable and cooperative fashion to resolve our outstanding concerns with respect to the services the State provides to persons with intellectual and developmental disabilities in sheltered workshop settings. We hope that you will give this information careful consideration and that it will assist in facilitating a dialogue swiftly addressing the areas that require attention.

We are obligated to advise you that, in the unexpected event that we are unable to reach a resolution regarding our concerns, the Attorney General may initiate a lawsuit pursuant to the ADA once we have determined that we cannot secure compliance voluntarily, 42 U.S.C. § 2000d-1, to correct deficiencies of the kind identified in this letter. We would prefer, however, to resolve this matter by working cooperatively with the State and are confident that we will be able to do so. The Department of Justice attorney assigned to this investigation will be contacting the State's attorneys to discuss this matter in further detail. If you have any questions regarding this letter, please call Greg Friel, Acting Chief of the Civil Rights Division's Disability Rights Section, at (202) 514-8301.

Sincerely,

Thomas E. Perez
Assistant Attorney General

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

STANLEY LIGAS, *et al.*, on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	Case No. 05-4331
vs.	)	Judge Holderman
BARRY S. MARAM, *et al.*,	)	
Defendants.	)	

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

Preliminary Statement

The United States files this Statement of Interest pursuant to 28 U.S.C. § 517 in support of a grant of preliminary approval of the parties' jointly submitted Consent Decree. This litigation implicates the proper interpretation and application of Department of Justice regulations implementing the Americans with Disabilities Act, 42 U.S.C. § 12101 et. seq., ("ADA") and compliance with the mandate of community integration under *Olmstead v. L.C.*, 527 U.S. 581 (1999). Accordingly, the United States has a strong interest in the resolution of this matter.

Plaintiffs allege that Illinois relies on large, privately-run congregate care institutions[1] to provide long-term care services for individuals with developmental disabilities while failing to offer services to these individuals in community-based settings. This practice, plaintiffs claim, violates Title II of the ADA, Section 504 of the Rehabilitation Act, Title XIX of the Social

[1] Known as "intermediate care facilities for people with developmental disabilities" ("ICF-DDs").

Security Act, and 42 U.S.C. § 1983. (Second Amended Complaint for Declaratory and Injunctive Relief, Aug. 31, 2009 ("Compl."), ¶ 1.)

Plaintiffs are a putative class of Medicaid eligible adults with developmental disabilities who either 1) reside in ICF-DDs and who have requested community placements, or 2) are at risk of institutionalization and have requested community placement. Plaintiffs maintain that the State has violated the "integration mandate" of Title II and § 504 by failing to develop a comprehensive, effectively working plan to offer developmentally disabled individuals services in the most integrated settings appropriate to their needs. (Compl. ¶¶ 6, 86.)

After lengthy litigation initiated in 2005, the parties proposed a consent decree in November 2008, which the Court subsequently rejected because of concerns raised by objectors about the definition of the class and the scope of the remedy. In response to these concerns, the parties revised their consent decree and filed with this Court on January 25, 2010. The Second Proposed Consent Decree addresses the objectors' concerns by limiting the class for whom relief will be granted to individuals who have affirmatively "expressed preferences to reside in more integrated settings."[2] (Compl. ¶ 1.) Plaintiffs estimate that the class includes at least 320 current ICF-DD residents and more than 4,000 individuals with disabilities who live at home and have expressed a desire for placement in community settings. (Compl. ¶ 89.)

The parties' revisions to the class definition address the concerns raised by objectors that under *Olmstead*, community placement is only appropriate where "the affected persons do not

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[2] Specifically, the new class comprises "two sub-classes of individuals: (1) ICF-DD residents who have requested community placements; and (2) individuals who are at risk of institutionalization and who have requested community based services or placements." (Compl. ¶ 86.) While the parties in this case have narrowed the class to individuals who have affirmatively expressed a desire to be placed in the community, *Olmstead* itself held that a broader class – those who can appropriately be served in the community and do not oppose such

oppose such treatment." *Olmstead*, 527 U.S. at 607. The proposed consent decree ensures the autonomy of each class member to choose whether to live in a community placement, and does not force any individual out of a placement with which he or she is currently satisfied. The Consent Decree importantly *excludes* any individual who objected to the previous proposed consent decree. (Proposed Order at 3.) Indeed, the proposed consent decree requires that there be a "current record" reflecting the individual's desire to live in a community placement. (Second Proposed Consent Decree at 2-3.)

The Consent Decree will ensure, however, that community capacity exists for individuals who choose to reside in community-based settings. In doing so, this decree offers the promise of relief for individuals who are appropriate for such placement and desire to be in such placements in a system that has failed to realize the goals of community integration in the ten years since *Olmstead* was decided.[3] By committing to develop this infrastructure for community-based placements, the state of Illinois demonstrates its commitment to shift from relying on institutional settings that unnecessarily segregate individuals with developmental disabilities, to developing integrated, community-based settings, as required by *Olmstead*. The United States recognizes the systemic reform embodied in this Second Proposed Consent Decree as significantly advancing the enforcement of *Olmstead* in Illinois. Such reform aligns with the Administration's commitment to the goals of community integration.[4]

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placement – should be served in an integrated setting. *Olmstead*, 527 U.S. at 607. The class in this case comprises a subset of the individuals who would be entitled to relief under *Olmstead*.

[3] Illinois "ranks 51st among all states and the District of Columbia in its placement of people with developmental disabilities in small Community Settings." (Compl. ¶ 3.)

[4] "President Obama Commemorates Anniversary of Olmstead and Announces New Initiatives to Assist Americans with Disabilities," June 22, 2009, Office of the Press Secretary, *available at* http://www.whitehouse.gov/the_press_office/President-Obama-Commemorates-Anniversary-of-

Statutory and Regulatory Background

Congress enacted the Americans with Disabilities Act ("ADA") in 1990 "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). Congress found that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." 42 U.S.C. § 12101(a)(2). For those reasons, Congress prohibited discrimination against individuals with disabilities by public entities.

> [N]o qualified 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.

As directed by Congress, 42 U.S.C. § 12134, the Attorney General issued regulations implementing Title II, which are based on regulations issued under section 504 of the Rehabilitation Act.[5] See 42 U.S.C. § 12134(a); 28 C.F.R. § 35.190(a); Executive Order 12250, 45 Fed. Reg. 72995 (1980), reprinted in 42 U.S.C. § 2000d-1. The Title II regulations, 28 C.F.R. § 35.130(d), require public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." The

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Olmstead-and-Announces-New-Initiatives-to-Assist-Americans-with-Disabilities/). The United States has filed briefs in a number of *Olmstead* enforcement cases, including *State of Connecticut Office of Protection and Advocacy for Persons with Disabilities, et al. v. State of Connecticut, et al.*, No. 3:06-CV-00179 (D. Conn. motion to participate as amicus filed Nov. 25, 2009); *ARC of Virginia, Inc. v. Kaine, et al.*, No. 3:09-CV-686 (E.D. Va. amicus filed Nov. 24, 2009); and *Marlo M. v. Cansler, et al.*, No. 5:09-cv-00535 (E.D. N.C. amicus filed Dec. 21, 2009). Additionally, the United States recently intervened in *Disability Advocates, Inc. v. Paterson* No. 03-CV-3209 (E.D.N.Y. intervention granted Nov. 23, 2009).

[5]Section 504 prohibits state and local governments that receive federal funds from discriminating against individuals with disabilities. 29 U.S.C. § 794.

preamble to the "integration regulation" explains that "the most integrated setting" is one that "enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible." 28 C.F.R. §35.130(d), App. A, at 571 (2009).

Ten years ago, in a landmark decision, the Supreme Court held under Title II of the ADA and its integration regulation, that unjustified segregation of individuals with disabilities by public entities constitutes unlawful discrimination. *Olmstead v. L.C.*, 527 U.S. 581, 586 (1999). *Olmstead* held that public entities are required to provide community-based services for persons with disabilities who would otherwise be entitled to institutional services when (a) treatment professionals reasonably determine that such placement is appropriate; (b) the affected persons do not oppose such treatment; and (c) the placement can be reasonably accommodated, taking into account the resources available to the entity and the needs of others who are receiving disability services from the entity. *Olmstead*, 527 U.S. at 607.

A public entity's duty to provide integrated (i.e., community-based) services, however, is not absolute. A public entity is required only to make reasonable modifications that do not "fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7) (2009). Thus, a public entity violates Title II if it segregates individuals in institutions when those individuals could be served in the community through reasonable modifications to its program, unless it is able to demonstrate that doing so would result in a "fundamental alteration" of its program. *Olmstead*, 527 U.S. at 595-596.

Argument

The proposed consent decree merits preliminary approval as it is "within the range of possible approval" that ultimately could be given final approval as it is fair, adequate, and reasonable. *Kaufman v. American Exp. Travel Related Services Co., Inc.*, No. 07-1707, 2009 WL 5166229, *7-8 (N.D. Ill. Dec. 22, 2009) and *Kessler v. American Resorts Intern.'s Holiday Network, Ltd.*, No. 05-5944, 2008 WL 687287, *3 (N.D. Ill. March 12, 2008) (citing *Armstrong v. Bd. of School Directors of the City of Milwaukee*, 616 F.2d 305, 312 (7th Cir. 1980), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998)). The consent decree fairly addresses Plaintiffs' allegations that Defendants have systematically failed to provide them with services in appropriate community-based settings that Plaintiffs have requested. This allegation provides the "common nucleus of operative fact" to ensure that the commonality requirement is satisfied. Further, the creation of community-based services for individuals with developmental disabilities who have requested such placements is an appropriate class-based remedy for the systemic discrimination alleged by Plaintiffs. For the reasons set forth below, the relief afforded to the narrow class as defined under the proposed consent decree meets the standard for preliminary approval, and the settlement should proceed to the second step in the review process, the fairness hearing.

I. Unnecessary Segregation of Individuals with Disabilities Violates Title II

The Court in *Olmstead* found that "unjustified isolation . . . [is] discrimination based on disability." *Olmstead*, 527 U.S. at 597. The Consent Decree before the Court advances an important public interest in allowing individuals with developmental disabilities to live in community settings. As noted in *Olmstead*, the unjustified segregation of persons with disabilities can stigmatize them, "perpetuat[ing] unwarranted assumptions that persons so

isolated are incapable or unworthy of participating in community life."[6] *Olmstead* 527 U.S. at 600. And while 10 years have passed since *Olmstead* was decided, the same goals underlying that case and the ADA are present today: a goal of "full participation, independent living, and economic self-sufficiency for such individuals." 42 U.S.C. 12101(a)(8).

Recently, in *Disability Advocates, Inc. v. Paterson*, No. 03-3209, 2009 WL 2872833 (E.D.N.Y. Sep. 8, 2009) ("*DAI*"), the court found that New York State was liable under Title II for denying thousands of individuals with mental illness in New York City the opportunity to receive services in the most integrated setting appropriate to their needs. The court further found that adult homes were not the most integrated setting appropriate to their needs and that "virtually all of DAI's constituents are qualified to receive services in supported housing and are unopposed to receiving services in a more integrated setting" and that defendants failed to prove that the relief requested would constitute a fundamental alteration of the State's mental health service system. *DAI* at *87. The instant case presents similar legal issues as in *Disability Advocates*. Here, defendants can make a reasonable modification to their existing administration of services by choosing to fund care in community settings, rather than in segregated institutional settings.[7] Thus, plaintiffs allege a straight-forward ADA Title II violation that is prohibited by the Supreme Court decision in *Olmstead*.

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[6] *See also* U.S. Amicus Brief in *Olmstead* at 16-17, citing to 136 Cong. Rec. H2603 (daily ed. May 22, 1990) (statement of Rep. Collins) ("To be segregated is to be misunderstood, even feared," and "only by breaking down barriers between people can we dispel the negative attitudes and myths that are the main currency of oppression." The segregation of plaintiffs "has the potential to engender or perpetuate negative attitudes.") (Attached as Exh. A.)

[7] The most integrated setting requirement applies not only to individuals currently in institutional settings, but also to individuals at "risk of institutionalization." *Fisher v. Oklahoma Health Care Authority*, 335 F.3d 1175 (2003). Thus, the Proposed Consent Decree's provisions relating to individuals residing in home settings appropriately addresses a Title II violation.

II. Title II Claims May Require Systemic Reform and Class Actions are Appropriate Tools for Such Claims

A. Class Actions are Important Tools to Enforce the Integration Mandate

The class action is an appropriate mechanism to achieve relief for violations of Title II in the community integration context. *Rolland v. Patrick*, No. 98-30208, 2008 WL 4104488 (D. Mass. Aug. 19, 2008), *Williams v. Blagojevich*, No. 05-04673, 2006 WL 3332844, *5 (N.D. Ill. Nov. 13, 2006). As a practical matter, integration claims typically involve large service systems that affect hundreds or thousands of individuals, and thus the class action device is a useful and necessary tool to address such systemic problems (rather than forcing individual plaintiffs to pursue innumerable individual complaints).

To proceed as a class action, a class must satisfy the following criteria: (1) numerosity; (2) commonality of facts and law; (3) typicality between the class claims and those of the named parties; and (4) adequacy of the representation by the named parties and class counsel. Fed R. Civ. P. 23(a). *Harper v. Sheriff of Cook County*, 581 F.3d 511, 513 (7th Cir. 2009), *Rosario v. Livaditis*, 963 F.2d 1013, 1017 (7th Cir. 1992). A class must fit within one of the types of classes described in Rule 23(b). Fed R. Civ. P. 23(b).

A common nucleus of operative fact is usually enough to satisfy the commonality requirement of Rule 23(a)(2). *Rosario*, 963 F.2d at 1018. Common nuclei of fact are typically manifest where, as in this case, the defendants have engaged in standardized conduct towards members of the proposed class. *See Chandler v. Southwest Jeep-Eagle, Inc.*, 162 F.R.D. 302, 308 (N.D. Ill. 1995) (citing cases). The commonality requirement does not necessitate "every class member's factual or legal situation to be a carbon copy" of those of the named plaintiffs. *Wesley v. Gen. Motors Acceptance Corp.*, No. 91-3368, 1992 WL 57948, at *3 (N.D. Ill. Mar. 20, 1992). *See also Smith v. Aon Corp.*, 238 F.R.D. 609, 614 (N.D. Ill. 2006) ("The

commonality requirement is not difficult to meet"); *Gen. Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147, 155 (1982).

In decertifying a prior class in this case, the Court pointed to concerns with commonality and typicality: "sufficient commonality does not exist among the highly specialized needs and desires of the class members and their legal guardians. Similarly, because the named plaintiffs meet the conditions set forth in *Olmstead* insofar as they have been adjudged eligible for, and desirous of, community placement, the named plaintiffs' claims are not typical of class members who may or may not satisfy the *Olmstead* criteria." (Order Decertifying Class at 2, July 7, 2009.) Since decertification, Plaintiffs have revised the class covered by the Proposed Consent Decree before this Court to include "two sub-classes of individuals: (1) ICF-DD residents who *have requested community placements*; and (2) individuals who are at risk of institutionalization and who *have requested community based services or placements*." (Compl. at 12, emphasis added.) The commonality requirement of Rule 23 is satisfied for this proposed class based on the defendants' standardized conduct towards class members in its administration of services to individuals with developmental disabilities in allegedly unnecessarily segregated settings.

Differences in the individualized facts regarding putative class members' specific medical needs and the specific supports they would need in the community do not serve as a bar to class certification. *Rolland v. Patrick*, No. 98-30208, 2008 WL 4104488, *4 (D. Mass. Aug. 19, 2008) ("any identified factual differences between the named Plaintiffs and some of the class they sought to represent did not undermine commonality and, in particular, did not preclude certification of a class of persons with mental retardation who were challenging Defendants' practices.") *See also Ricci v. Okin*, 537 F.Supp. 817 (D. Mass. 1982). Such factual differences

can be addressed in the remedial phase, as the appropriate placement for each putative class member is determined. *Rolland*, 1999 WL 34815562 at *5 (noting that class certification was appropriate and "individualized determinations of needs and services were more properly left for post-judgment relief"); *Marisol A. v. Guiliani*, 126 F.3d 372, 375 (2d Cir. 1997) (individual needs of children within the class did not defeat commonality).

The question of typicality is closely related to the question of commonality. *Rosario*, 963 F.2d at 1018. A "plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory." *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983) (citations and internal quotation omitted). This requirement "primarily directs the district court to focus on whether the named representatives' claims have the same essential characteristics as the claims of the class at large." *Retired Chicago Police Ass'n v. City of Chicago*, 7 F.3d 584, 596-7 (7th Cir. 1993). Defendants engaged in the same course of conduct in administering services intended for the members of the class and the named Plaintiffs, and all have the same claim – that Defendants are violating Title II of the ADA integration mandate. Thus, typicality is satisfied.

Furthermore, as this court has noted, the mere fact that a particular individual does not desire to have his or her civil rights vindicated cannot serve as a bar to the resolution of such rights. *Imasuen v. Moyer*, No. 91-C-5425, 1992 WL 26705, *2 (N.D. Ill. Feb. 7, 1992) (Holderman, J.) ("[T]he fact that some class members may be satisfied with an unconstitutional system and would prefer to leave violations of their rights unremedied is not dispositive under Rule 23(a)"); *Wyatt v. Poundstone*, 169 F.R.D. 155, 161 (M.D. Ala. 1995) (refusing to decertify class where some institutional residents opposed community placement because doing so

"would, in effect, preclude the use of the class action device in many of the very cases where it could be the most advantageous"); *Waters v. Berry*, 711 F. Supp. 1125, 1131-32 (D.D.C. 1989); *Lanner v. Wimmer*, 662 F.2d 1349, 1357 (10th Cir. 1981); *Wilder v. Bernstein*, 499 F.Supp. 980, 993 (S.D.N.Y. 1980); Newberg on Class Actions § 16:17 (4th ed. 2009).

Class certification has regularly been granted in the *Olmstead* context.[8] The individualized needs of potential class members do not defeat the ability to employ the class action device where the requirements of Rule 23 are nonetheless met. The class covered by the proposed consent decree easily satisfies the standards described above.

B. Federal Courts Have Frequently Approved Class-Based Remedies to Redress Violations of the Integration Mandate of Title II

Systemic reform is often necessary to remedy class-based community integration claims. For instance, in *Rolland v. Cellucci*, No. 98-cv-30208, 1999 WL 34815562 (D. Mass. Feb. 2, 1999), the court approved a class settlement to remedy allegations that Massachusetts relied on inappropriate nursing home placements to serve individuals with developmental disabilities, in violation of the Nursing Home Reform Amendments to the Medicaid Act and the ADA.[9] Under the 2000 settlement, the State successfully moved approximately 1,000 class members from the restrictive nursing home settings into the community. *Voss v. Rolland*, No. 08-1874, 2010 WL 157475 (1st Cir. Jan. 19, 2010); *Rolland*, 191 F.R.D. 3, 15-16 (D. Mass. 2000). A group of

[8] *See Ball et al v. Rodgers*, 492 F.3d 1094 (9th Cir. 2007); *Messier v. Southbury Training School*, 562 F.Supp. 2d 294 (D. Conn. 2008); *Colbert v. Blagojevich*, No. 1:07cv4737 (N.D. Ill. Sept. 29, 2008); *Williams v. Blagojevich*, No. 1:05-cv-04673 (N.D. Ill. Nov. 11, 2006). (Unpublished Orders are attached as Exh. B.)

[9] The class certified was of "all adults with mental retardation and other developmental disabilities in Massachusetts who resided in nursing facilities on or after October 29, 1998, or who are or should be screened for admission to nursing facilities pursuant to 42 U.S.C. § 1396r(e)(7) and 42 C.F.R. 483.112 et seq." *Rolland*, 1999 WL 34815562 at *2.

parents of individuals with developmental disabilities who desired to remain in nursing homes challenged the settlement and the class certification, objecting that it did not adequately protect class members who wished to remain in nursing homes. The District Court rejected this challenge, and the First Circuit affirmed the District Court's finding that the settlement was fair, reasonable, and adequate. The First Circuit recognized that the settlement agreement reflected a preliminary determination that the class would be appropriate for community placement, but that individualized determinations would be made during the transition planning process that would result in community placement only where appropriate, and would take into consideration the wishes of the class members' families. *Voss*, 2010 WL 157475 at *7.

Similar system-wide relief was reached in a settlement agreement in *Long v. Benson*, No. 4:08-cv-26-RH-WCS (N.D. Fla. Sept. 15, 2009) (Attached at Exh. C). *Long* involved a state-wide class action brought on behalf of Florida residents who currently, or at any time during the litigation, are Medicaid eligible adults with disabilities; are unnecessarily confined to a nursing facility that receives Medicaid funds; desire to reside in the community instead of a nursing facility; and could reside in the community with appropriate services. Plaintiffs alleged that class members were being unnecessarily institutionalized because of Defendants' failure to cover services and support in appropriate, integrated community settings. The parties reached a settlement of the class claims requiring the state to spend $27 million on new waiver slots over a 12 month period. While the settlement did not expressly state the number of class members who would be served under the settlement, the amount of funds committed reflects the sort of systemic relief contemplated in the consent decree before this court.

Similar system-wide relief will likely be forthcoming in *Disability Advocates, Inc. v Paterson*. In September 2009, the court ruled for the plaintiffs on liability, finding that New

York discriminated against DAI's 4,300 constituents with mental illness by denying them services in the most integrated setting appropriate to their needs. *DAI*, 2009 WL 2872833 at *1. In *Disability Advocates*, the court cited to authority that the court has "broad discretion to fashion equitable relief that is commensurate with the scope of the violation" and outlined the basic elements of the proposed remedial plan that Plaintiffs had already submitted. *Id.* at *86. Plaintiffs' proposed plan included large-scale capacity building of community placements; developing infrastructure to administer these community services; providing community based options for individuals at risk of entry into adult homes; and providing for oversight by an independent monitor.[10] *Id.* at *87.

The United States intervened in *DAI* and filed a brief supporting the plaintiff's proposed remedy. (Pl. Intervenor U.S.'s Mem. in Supp. of Pl.'s Remedial Plan and in Opp. to Defs.' Proposed Remedial Plan, Nov. 24, 2009, Attached as Exh. D) The defendants' proposal, while differing on the ultimate number of beds (200 beds per year, for 5 years), nonetheless sets forth a plan of systemic reform. (Defs.' Proposed Remedy at 7, Attached as Exh. E) The consent decree here contemplates exactly the sort of systemic reform that was reached in *Long* and *Rolland* and that will likely result from the *Disability Advocates, Inc.* litigation.

In addition to the cases above, many community integration cases have reached settlements resulting in systemic reform that has led to the development of community-based

[10] Plaintiff's proposal would require the development of at least 1,500 supported housing beds per year, ensuring that no fewer than 4,500 supported housing beds are developed. Additionally, plaintiff's guidelines would require detailed descriptions of the responsibilities of the different State agencies and Defendants in carrying out the plan and a time line for accomplishing all aspects of the plan. *Id.* at *87.

settings.[11] Class-wide systemic relief is appropriate for integration violations of the state's administration of its programs and services. To impose more stringent rules on plaintiffs' ability to vindicate their rights to live in the most integrated setting would obstruct the ADA's goals of community integration.

Conclusion

For the above stated reasons, the Court should grant preliminary approval of the proposed consent decree. With the Court's permission, counsel for the United States will be present at the hearing scheduled for January 28, 2010.

Dated: January 26, 2010

Respectfully submitted,

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[11] *Chambers et al. v. the City and County of San Francisco*, No. 06-06346 (N.D. Ca. Sept. 18, 2008) (order granting final approval of settlement providing for community-based living options to class members); *Hawaii Disability Rights Center v. State of Hawaii*, No. 03-00524 (D. Hawaii Aug. 12, 2005) (settlement providing for Home and Community Based Services for class of individuals with developmental disabilities, *available at* http://www.hawaiidisabilityrights.org/forms/S.M.SETTLEMENT8-12-05(final-redact).DOC); *Brown et al v. Bush et al*, No. 98-673 (S.D. Fla. Aug. 11, 2005 Order approving settlement calling for community placements for a class of approximately 280 individuals with developmental disabilities in institutional settings, *available at* http://www.centerforpublicrep.org/uploads/1h/Ew/1hEw39KXGykQddtjztXKew/Approval-of-Settlement-Agreement.pdf); *ARC of Connecticut et al v. O'Meara & Wilson Coker*, No. 01-1871 (D. Conn. May 20, 2005) (settlement providing for expansion of HCBS waiver for class of individuals who were eligible for, but had been denied waiver services). (Settlement agreements attached as Exh. F.)

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JUSTICE NEWS

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FOR IMMEDIATE RELEASE

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Department of Justice Reaches Landmark Americans with Disabilities Act Settlement Agreement with Rhode Island

The Justice Department announced today that it has entered into a statewide settlement agreement that will resolve violations of the Americans with Disabilities Act (ADA) for approximately 3,250 Rhode Islanders with intellectual and developmental disabilities (I/DD). The landmark ten year agreement is the nation's first statewide settlement to address the rights of people with disabilities to receive state funded employment and daytime services in the broader community, rather than in segregated sheltered workshops and facility-based day programs. Approximately 450,000 people with I/DD across the country spend their days in segregated sheltered workshops or in segregated day programs. The agreement significantly advances the department's work to enforce the Supreme Court's decision in *Olmstead v. L.C*, which requires persons with I/DD be served in the most integrated setting appropriate .

As a result of the settlement, 2,000 Rhode Islanders with I/DD who are currently being served by segregated programs will have opportunities to work in real jobs at competitive wages. Additionally, over the next ten years, 1,250 students with I/DD will receive services to help transition into the workforce.

"Today's agreement will make Rhode Island a national leader in the movement to bring people with disabilities out of segregated work settings and into typical jobs in the community at competitive pay," said Acting Assistant Attorney General Jocelyn Samuels for the Civil Rights Division. "As Rhode Island implements the agreement over the next ten years, it will make a dramatic difference in the lives of people with disabilities, businesses and communities across the state. We congratulate Governor Chafee and state officials for signing this agreement, as we believe that Rhode Island will be a model for the nation with respect to integrated employment for people with disabilities."

"The filing of today's consent decree is a critically important event in Rhode Island history," said U.S. Attorney Peter F. Neronha for the District of Rhode Island. "It ushers in a new day of opportunity – opportunity for Rhode Island residents with intellectual or developmental disabilities to live, work and spend their recreational time alongside their fellow Rhode Islanders. It is an opportunity for this State to move forward; to recognize, finally, that we are better, stronger, when all of us – all of us –are interwoven in the fabric that is Rhode Island."

Under the agreement, Rhode Island has agreed to provide:

- Supported employment placements that are individual, typical jobs in the community, that pay at least minimum wage, and that offer employment for the maximum number of hours consistent with the person's abilities and preferences, amounting to an average of at least 20 hours per week across the target population;

- Supports for integrated non-work activities for times when people are not at work including mainstream educational, leisure or volunteer activities that use the same community centers, libraries, recreational, sports and educational facilities that are available to everyone;

- Transition services for students with I/DD, to start at age 14, and to include internships, job site visits and mentoring, enabling students to leave school prepared for jobs in the community at competitive wages;

- Significant funding sustained over a ten year period that redirects funds currently used to support services in segregated settings to those that incentivize services in integrated settings.

The ten year agreement will allow the state to ensure that the services necessary to support individuals with I/DD in competitive, integrated jobs will not disappear with a change in administration or legislative leadership. As a result of this commitment, the business community has already stepped up to partner with the state. The U.S. Business Leadership Network (USBLN), a network of Fortune 500 companies, and Walgreens will co-host a regional business summit in Rhode Island in June 2014 to explore how to improve those partnerships.

The agreement is the result of an ADA investigation that began in January 2013 into Rhode Island's day activity service system for people with I/DD. The department, the state, and the City of Providence entered into an interim settlement agreement in June 2013. The interim settlement agreement focused on a single provider, which was one of the largest facility-based employment service providers in the state's system, and a school-based sheltered workshop at a Providence, R.I., high school, which was a point of origin for many people entering the provider's workshop.

The department continued its investigation of the statewide system, and in January 2014 issued findings determining that the statewide system over-relied on segregated services, to the exclusion of integrated alternatives, in violation of the ADA. The department found workers with I/DD in settings where they had little or no contact with persons without disabilities, and where they earned an average wage of $2.21 per hour. The investigation found that workers typically remain in such settings for many years, and sometimes decades. The department also found that students in Rhode Island schools were often not presented with meaningful choices to participate in integrated alternatives, such as integrated transition work placements and work-based learning experiences, which put students at serious risk of unnecessary postsecondary placement in segregated sheltered workshops and facility-based day programs.

Since June 2013, the state and city have provided supported employment services to people with I/DD transitioning from the original two facilities covered by the interim settlement agreement. Many of these individuals have now accessed jobs in typical work settings where they can interact with non-disabled coworkers and customers, and enjoy the same employment benefits as their non-disabled peers. Individuals have secured jobs at both locally owned and national companies. Because of the interim settlement agreement, Pedro , an individual who transitioned from the in-school sheltered workshop to the adult workshop, where he earned just 48 cents an hour, is now making minimum wage working at a restaurant. Peter , another former sheltered workshop employee who was earning approximately $1.50 per

hour, now has a job earning more than minimum wage working for the state as a custodian at a hospital. Louis has gone from earning sub-minimum wages performing rote tasks at the sheltered workshop to a full-time position at a state hospital, where he uses his strong computer skills and passion for mathematics to generate Excel reports, record time sheets, and complete other office tasks. For more information on these individuals and others, please visit the Department's Faces of Olmstead website .
Please visit www.ada.gov/olmstead to learn more about the Division's ADA Olmstead enforcement efforts, and www.justice.gov/crt to learn more about the laws enforced by the Justice Department's Civil Rights Division

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Civil Rights Division

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