

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

SHAWANDA MCGEE
Plaintiff

VERSUS

MIKE TREGRE,
Sheriff of St. John the Baptist Parish
In his individual and official capacity
Defendant

*** CIVIL ACTION NO. 2:18-CV-3341**

*** SECTION “R”**

*** JUDGE SARAH S. VANCE**

*** MAGISTRATE**

*** JUDGE DANIEL E. KNOWLES, III**

CONSENT JUDGMENT

Considering the agreement of the parties herein,

IT IS THUS ORDERED, ADJUDGED AND DECREED that Michael Tregre, Sheriff of the Parish of St. John the Baptist (hereinafter “SJBPSO”), shall enforce 42 U.S.C. § 12131, 42 U.S.C. § 12132, 28 C.F.R. § 35.160, 28 C.F.R. § 35.130, 29 U.S.C. § 794, 28 C.F.R. § 41.51, and 49 C.F.R. § 27.7, according to the following terms:

1) Purpose. This Agreement is entered into between Shawanda McGee (Plaintiff) and Michael Tregre, in his official capacity as Sheriff of the Parish of St. John the Baptist (SJBPSO) (collectively, Parties). This Consent Judgment shall resolve all issues and claims, including all claims for injunctive relief, sought in the above-captioned case, excepting only Plaintiff’s claims for alleged monetary damages and attorneys’ fees and costs.

2) Nondiscrimination. SJBPSO agrees not to engage in any act or practice, directly or through contracting, licensing, or other arrangements, that has the purpose or effect of unlawfully discriminating against any person with a disability in violation of Title II of the ADA.

3) Coverage of Involuntary Participation. Throughout this Agreement, terms such as “enjoyment,” “benefit,” or “seek” that in other contexts might imply the voluntary and willing participation of a member of the public in a public entity’s programs, services, or activities, shall also refer to a member of the public’s involuntary participation in SJBPSO law enforcement and related programs, services, and activities, such as arrest or detention.

4) **ADA Coordinator for Law Enforcement.** Within thirty (30) days of the signing of this Agreement, SJBPSO will designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title II and this Agreement. The duties of the ADA Coordinator for Law Enforcement will include investigation of any complaint communicated to SJBPSO alleging its noncompliance with, or alleging any actions that would be prohibited by, Title II or this Agreement. SJBPSO will post the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph on its website as well as in places open to the public. *See* 28 C.F.R. § 35.107(a). SJBPSO will maintain the ADA Coordinator for Law Enforcement for the term of this Agreement. If SJBPSO changes who it appoints as ADA Coordinator for Law Enforcement, it will notify the Advocacy Center in writing, and update the name and contact information anywhere it appears, within five (5) day of making such a change.

5) **Provision of Auxiliary Aids and Services.** SJBPSO will ensure that appropriate auxiliary aids and services, including qualified interpreters, are made available to all members of the public who are deaf, hard of hearing, or deaf-blind, where such aids and services are necessary to ensure effective communication, so that they may participate in or benefit from SJBPSO's law enforcement and related services, programs, or activities on an equal basis with others.

6) **Primary Consideration.** In determining what type of auxiliary aid or service is necessary to comply with the ADA, SJBPSO agrees to give primary consideration to the expressed preference for a particular auxiliary aid or service by an individual who is deaf or hard of hearing. 28 C.F.R. § 35.160. "Primary consideration" means that SJBPSO will inquire as to the choice of auxiliary aid or service of the individual with a disability and will honor the expressed choice unless it can demonstrate that another equally effective means of communication is available.

7) **Coordination with 911 operator.** Defendants shall ensure that when a request for an auxiliary aid or service is given to a 911 operator or the operator has a reason to believe an individual requires an auxiliary aid or service for effective communication, that information is immediately relayed to the appropriate individual(s) at SJBPSO so that the process of securing the auxiliary aid or service may begin immediately.

8) **The Immediate Availability of VRI.** VRI (Video Remote Interpreting), as defined by 28 C.F.R. § 35.160(d)(1-3), shall be made available immediately to any individual either requesting an interpreter or known by SJBPSO to require the use of an interpreter. In cases where an imminent threat exists, VRI shall be made available as soon as practicable after the threat is extinguished. SJBPSO will have until May 31, 2018, to put in place a reliable VRI service provider as described in this paragraph. Defendant will ensure that by May 31, 2018, employees who have contact with the public will be trained on the technology and it will be available for use anywhere Defendant or his employees have contact with the public, including in the field (i.e., at calls for service) and at the Sheriff's Office.

9) **Time for In-Person Interpreter.** In situations requiring prompt action by law enforcement, an in-person interpreter should be provided as soon as practicable of the first identification of a need, and such services should be provided same-day whenever possible. In other situations, requests for in-person interpreter during normal business hours, should be made to SJBPSO at least 24 hours in advance of the desired meeting time. Requests for an in-person

interpreter may be made for the same day, at night, or during the weekend or holidays, however the availability of an in-person interpreter is limited to the resources of the Deaf Action Center or other interpreter services in the greater Baton Rouge and New Orleans area. If an individual's primary consideration, pursuant to paragraph 8, is to use VRI, no in-person interpreter need be provided.

10) Requests for a Certified Deaf Interpreter or Auxiliary Aids that are Difficult to Obtain. In situations where it is determined, after making reasonable efforts, that a specialized in-person interpreter, such as a Certified Deaf Interpreter or Tactile Interpreter, and/or additional auxiliary aids needed to provide effective communication cannot be secured, SJBPSO shall honor these requests within a reasonable time. In such cases, if the auxiliary aid cannot be obtained the same day the request is received, SJBPSO shall be permitted to schedule the communication for the nearest date in which the provision of such an auxiliary aid would be possible. The request for difficult to obtain Auxiliary Aids does not relieve SJBPSO of the duty to use VRI and an in-person interpreter if doing so would facilitate communication. This agreement shall not be interpreted to relieve SJBPSO of its duty to provide individuals who are deaf or hard of hearing with due process.

11) Use of Other Members of the Public to Facilitate Communication.

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

b) SJBPSO will not rely on an adult accompanying an individual who is deaf or hard of hearing to interpret or facilitate communication except:

- i. In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available, or
- ii. Where the individual who is deaf or hard of hearing specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances. *See* 28 C.F.R. § 35.160(c)(2)

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

12) Use of Written Materials. When an individual has requested an auxiliary aid or service and such auxiliary aid or service is necessary for the individual to effectively communicate, or SJBPSO has reason to believe the individual requires an auxiliary aid or service for effective communication, SJBPSO shall not ask that individual to write his or her signature on any written document or waive any rights until the auxiliary aid or service has been provided.

13) **Reasonable Modification of Handcuffing Policies.** When SJBPSO personnel deem it necessary to handcuff a person who is deaf or hard of hearing, personnel will reasonably modify standard operating procedure and handcuff deaf members of the public in front to enable the person to communicate using sign language or writing if, and only if, the SJBPSO personnel has determined that it is reasonably safe to do so.

14) **Imminent Threat and Exigent Circumstances.** When there is an emergency involving an imminent threat to the safety or welfare of an individual (including SJBPSO personnel or members of the public), and there is insufficient time to make available appropriate auxiliary aids and services, SJBPSO personnel will use whatever auxiliary aids and services are most effective under the circumstances to communicate with persons who are deaf or hard of hearing, consistent with an appropriate law enforcement response to the imminent threat. This may include, for example, exchanging written notes or using the services of a person who knows sign language but who is not a qualified interpreter, for an interim period during the period of ongoing imminent threat, even if the person who is deaf or hard of hearing would prefer a qualified sign language interpreter or another appropriate auxiliary aid or service. *See* 28 C.F.R. § 35.160(c). When there is no longer an imminent threat, SJBPSO will follow its procedures to provide appropriate auxiliary aids and services.

a) An “imminent threat” means truly exigent circumstances, i.e., where any delay in providing immediate services to the individual could have life-altering or life-ending consequences. *See* 28 C.F.R. § Pt. 35, App. A. The imminent threat exception in is not intended to apply to the typical and foreseeable emergency situations that are part of the normal operations of Defendant. *See id.*

15) **Communication Assessment Form.** Upon taking an individual with a disability into custody for processing, SJBPSO, in consultation with the arrestee, will assess what auxiliary aids or services are necessary, and the timing, duration, and frequency with which they will be provided, using a Communication Assessment Form. The assessment will take into account all relevant facts and circumstances, including, for example, the individual’s communication skills and knowledge, and the nature and complexity of the communication at issue. Plaintiff shall provide a Model Communication Assessment Form to SJBPSO within fifteen (15) days of the Effective Date of this agreement. Within thirty (30) days of the Effective Date of this Agreement, SJBPSO shall submit to Plaintiff for its approval its finalized Model Communication Assessment Form. Parties shall work collaboratively and in good-faith to negotiate the contents of the form if Plaintiff deems SJBPSO’s form non-compliant.

16) **Ongoing Need for Communication Assessments and Consultation.** SJBPSO personnel will continue to reassess communication effectiveness regularly throughout the communication and will consult with the individual who is deaf or hard of hearing on a continuing basis to assess what measures are required to ensure effective communication. *See* 28 C.F.R. pt. 35, App. A. For example, while using paper and pen may be effective to communicate while checking a drivers’ license, further questioning at the precinct may require an interpreter, and SJBPSO must reassess as the situation changes whether the individual requires a different auxiliary aid or service to ensure that effective communication is provided.

17) **Use of Interpreting Service Agency(ies).** By May 31, 2018, SJBPSO agrees:

- a) To obtain technology, engage a service provider for, and train employees on the use of VRI;
- b) To form and maintain working relationships with one or more qualified oral/sign language interpreter agencies to ensure that interpreting services will be available on a priority basis, twenty-four hours per day, seven days a week;
- c) In the alternative, to make other appropriate arrangements such as contracting directly with or hiring qualified interpreters on a fee for service basis;
- d) To provide Plaintiff with documentation that such interpreter services are being made available;
- e) To record all oral/written requests it receives for oral/sign language interpreters and any action taken or denial of services. That record shall be provided to the Advocacy Center for review of compliance with this Agreement upon request.

18) **Phones.** Within sixty (60) days of the effective date of this Agreement, SJBPSO will equip the jail with a sufficient number of working TTYs but no fewer than one (1), to enable people who are deaf, hard of hearing, or who have speech impairments to make telephone calls of the same frequency and with the same availability as those people who do not use such phones. If any person who is deaf, hard of hearing, or who has a speech impairment prefers a different method of communication, such as other voice, text, and video-based telecommunications product, SJBPSO will make reasonable efforts to provide the communication device requested. SJBPSO will make available Video Relay Service(s) ("VRS") for deaf or hard of hearing inmates in accordance with Louisiana State statute requirements by January 1, 2019.

- a) Where telephone calls are time-limited, SJBPSO will adopt policies permitting a longer period of time for individuals using a TTY, videophone, or relay service due to the slower nature of these communications as compared to voice communications. If a TTY or videophone is not available in the same location as telephones used by arrestees or detainees who are not deaf or hard of hearing, arrestees or detainees who need to use a TTY or videophone will be allocated reasonable additional time to get to and from the location of the equipment.
- b) Signage will be displayed at all public telephones areas indicating the availability of the TTY and videophone and the procedure for obtaining them.
- c) SJBPSO will ensure that the privacy of telephone calls by arrestees or detainees using a TTY or videophone is equal to that of other arrestees' or detainees' telephone calls.

19) **Signs.** Within sixty (60) days of the effective date of this Agreement, at all police stations and other SJBPSO facilities at which law enforcement personnel are reasonably anticipated to engage with members of the public, SJBPSO will post conspicuous signs in public areas (including booking and holding areas). *See* 28 C.F.R. § 35.163. Such signs will advise persons who are deaf or hard of hearing of the availability of appropriate auxiliary aids and services, including qualified interpreters, as follows:

“To ensure effective communication with individuals who are deaf or hard of hearing, SJBPSO will provide auxiliary aids and services, such as qualified sign language, oral, or tactile interpreters; videophones; and TTYs, free of charge. Please ask for assistance by contacting SJBPSO’s ADA Coordinator for Law Enforcement, [name and full contact information].”

a) The posted signs will include the International Symbol for Hearing Loss, the International Symbol for TTYs, and a symbol to indicate the availability of sign language interpreters:



20) **Telephone Emergency Services.** SJBPSO will ensure that its telephone emergency services, including 9-1-1 services, shall provide direct access to individuals who use TTYs and computer modems. *See* 28 C.F.R. § 35.162.

21) **Effective Communication Policies and Procedures.** Within sixty (60) days of the effective date of this Agreement, SJBPSO will submit to the Plaintiff policies and procedures to implement fully the Settlement Agreement.

22) **Training.**

a) Informational briefing on the provisions of this agreement and the requirements of the ADA and related Louisiana requirements will be provided to all officers. The briefing will include what resources are available to the officers and public to effectively communicate with individuals who are deaf or hard of hearing, and how to obtain those resources in both emergency and non-emergency situations.

b) Within sixty (60) days of the effective date of this Agreement, SJBPSO officers and employees who will have contact with members of the public will receive a two-hour “legal aspects” training. Training and instruction related to the enforcement of ADA provisions and appropriate ways of serving people with disabilities, including individuals who are deaf and hard-of-hearing, will be incorporated into the “legal aspects” training program.

c) SJBPSO will ensure that all new law enforcement and related personnel who will have contact with members of the public will receive training on the requirements of the ADA, the use of auxiliary aids associated with serving persons with disabilities, including in-person interpreters, VRI, VRS, and appropriate ways of serving people with disabilities as a component of pre-service training and orientation.

23) **Grievance Procedures.** Within ninety (90) days of the effective date of this Agreement, SJBPSO will adopt and publish grievance procedures providing for prompt and equitable resolution of complaints against SJBPSO alleging any action that would be prohibited by Title II or this Agreement. *See* 28 C.F.R. § 35.107(b).

24) **Prohibition of Retaliation or Coercion.** SJBPSO will not discriminate against an individual because that individual has opposed any act or practice made unlawful by Title II or this Agreement, or because the individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under Title II or this Agreement. SJBPSO will not coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any individual in the exercise or enjoyment of, any right granted or protected by Title II or this Agreement. *See* 28 C.F.R. § 35.134.

25) **Succession of Claims. This Agreement applies to** Mike Tregre in his official capacity as the Sheriff of St. John the Baptist Parish, and his board members, officers, agents, servants, employees, insurers, owners, managers, directors, stockholders, attorneys, successors in office, assigns, representatives and underwriters and parent, subsidiary and affiliated corporations.

26) **Lack of Waiver.** Failure by the Plaintiff to enforce any provision or deadline of this Agreement will not be construed as a waiver of its right to enforce any provisions or deadlines of this Agreement.

27) **Headings.** The paragraph headings in this Agreement are for convenience only and will not be deemed to affect in any way the language of the provisions to which they refer.

28) **Signatories Bind Parties.** The persons signing for the Parties represent that they are authorized to bind their respective Parties to this Agreement.

29) **Entire Agreement.** This Settlement Agreement constitutes the entire agreement between the parties relating to the above-captioned matter. No other statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written Settlement Agreement, including its attachments, will be enforceable.

30) **Parameters of Agreement.** This Agreement does not purport to remedy any other potential violations of the ADA or any other Federal law not specifically referenced herein. This Agreement does not affect SJBPSO's continuing responsibility to comply with all aspects of the ADA.

31) **Severability.** If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the Parties, the Plaintiff and SJBPSO shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the initially agreed upon relative rights and obligations.

32) This Court shall retain jurisdiction to enforce this Judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff, Shawanda McGee, in consideration of the terms and Judgment of the Court set forth hereinabove, hereby voluntarily withdraws her pending Motion for Preliminary Injunction, and voluntarily dismisses all claims and causes of action alleged in Plaintiff's original and First Amended Complaint (ECF Docs. 1, 8), excluding claims for monetary damages, attorney fees and costs.

SO ORDERED, in New Orleans, Louisiana, this 15th day of May, 2018.



DISTRICT JUDGE

Respectfully submitted,

/s/ Carl Butler

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