

No

IN THE

Supreme Court of the United States

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, et al.,

Petitioners,

—v.—

TERESA SHEEHAN,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF ~~IN~~ SUPPORT OF THE AMERICAN
CIVIL LIBERTIES UNION AMERICAN DIABETES
ASSOCIATION THE EPILEPSY FOUNDATION MEN
HEALTH AMERICAN HEMATOLOGICAL SOCIETY

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Research Forum, *Ed*

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INTEREST OF AMICICURIAE¹

Amicus are organizations that represent the interests of millions of Americans with disabilities. *Amicus* and the people whose interests they represent are deeply committed to the proper interpretation and vigorous enforcement of the Americans with Disabilities Act (ADA), including the § 504 requirement that public agencies provide safe and nondiscriminatory policing for people with disabilities. Full statements of interest from each of the *amicus* are set forth in the Appendix to this brief.

SUMMARY OF ARGUMENT

It is critical to the lives of persons with many types of disabilities that police departments adopt and implement policies and practices that take disability into account during police interactions. Approximately half of all fatal police interactions involve persons with psychiatric disabilities.

As the City and County of San Francisco now acknowledge, Title II of the ADA requires nondiscrimination and reasonable modifications (also known as reasonable accommodations)² in policing

¹ The parties have lodged blanket letters of consent to the filing of *amicus* briefs. No party has authored this brief in whole or in part, and no one other than *amicus*, their members or their counsel has made a monetary contribution to the preparation or submission of this brief.

² See 42 U.S.C. § 12112(b)(5)(A) (2013) (defining disability discrimination in employment to include "Q R W"ing reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a G L V D unless the accommodation would impose an undue

activities, including in the type of detention at the heart of this case. In the context of a person with a known psychiatric disability, who is in crisis and subject to involuntary mental health treatment, the ADA requires that police employ widely accepted policing practices that use containment, coordination, communication, and time to seek safe resolutions.

The application of the ADA to the arrest or detention of persons with disabilities does not leave police officers unprotected when they are endangered, or when they make good faith mistakes under difficult circumstances. The ADA provides a defense when officer actions are justified by a direct threat to officer safety or to the safety of the public. And proof of intentional discrimination is required for any award of damages under Title II, a standard that requires at least deliberate indifference.

The crisis intervention practices that take psychiatric disability into account are not

to officers by policing experts for many years prior to the near-fatal shooting that occurred here. They are endorsed and taught by policing experts because they are safer for both officers and persons with disabilities. Nor are these practices inapplicable when a suspect with a disability appears to be dangerous. On the contrary, these practices were specifically designed for potentially dangerous situations. San) U D Q FdsiVof RhaVthe police should be free to forego these strategies in precisely the situation for which they were meant †makes no sense at all.

Whether a direct threat defense exists is measured by the objective factors accepted by this Court in *Sc Bd. o Na Cj b s Fh v Ah u*, 480 U.S. 273, 287 §9 (1987), and adopted by the Department of Justice in its regulations implementing Title II of the Act. Here, considering the objective evidence, the probability of harm, and the effects of mitigation (that is, whether reasonable accommodation would have lessened any risk of harm), the undisputed facts do not establish San) U D Q Eilv F R • V defense as a matter of law.

This Court should affirm the Ninth & L U F X L W • reversal of summary judgment for San Francisco on Teresa 6 K H H KADAQctav. Ms. Sheehan is protected by the ADA and is entitled to pursue her claim.

and detentions.⁵ Committee reports on the ADA show & R Q J Under V W cover all activities of public agencies, including police activities such as arrests.⁶

⁵ 28 C.F.R. pt. 35, app. B (2014) . 7 general regulatory obligation to modify policies, practices, or procedures requires law enforcement to make changes in policies that result in discriminatory arrests or abuse of individuals with G L V D E L O L W E I H A p p l i e s to anything a public entity G R H U S . U S D e p t . o f J u s t i c e , C i v i l R i g h t s D i v . , T h e A D A a n d P o l i c e C o m m u n i t y G a u g e (2 0 0 8) . : K e e n i n g with persons with disabilities, law enforcement agencies often fail to modify policies, practices, or procedures in a variety of law enforcement settings including citizen interaction, detention, and arrest procedures. . . . When interacting with police and other law enforcement officers, people with disabilities are often placed in unsafe situations or are unable to communicate with officers

While the Fifth Circuit found an unwritten exception in the Act excluding arrests, the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits, and possibly the Fifth Circuit in a different panel, have all applied the ADA to arrests and related police interactions.⁷ Indeed, even the City of San Francisco now

Rec. 11,461 (1990) (statement of Rep. Mel Levine) . . . 5 H J U H W I X O C
it is not rare for persons with disabilities to be mistreated by the police. Sometimes this is due to persistent myths and stereotypes about disabled people. At other times, it is actually due to mistaken conclusions drawn by the police officer witnessing a disabled person's behavior. . . . Although I have no doubt that police officers in these circumstances are acting in good faith, these mistakes are avoidable and should be considered illegal under the Americans with Disabilities Act. . . . One way to cut down on these incidents is for police officers to receive training about various G L V D E L O L W L H V μ

⁷ *Shi v Cj & Cj*, 743 F.3d 1211, 1231 (9th Cir. 2014), *c* *e*, 135 S. Ct. 702 (2014); *Rob v Cj*, 723 F.3d 966, 973 (8th Cir. 2013) . . . > ADA and the Rehabilitation Act apply to law enforcement officers taking disabled suspects into F X V W B G \ μ

As Point II below demonstrates, the kinds of modifications the ADA requires for arrests and detentions are in fact what sound police practice dictates for the safety of officers, people with disabilities and the public. By requiring that disability be taken into account in arrest and detention, but at the same time allowing an exception for direct threats as well as limiting damages liability, the ADA sensitively accounts for the needs of both police agencies and people with disabilities.

II. FAILING TO TAKE ACCOUNT OF DISABILITY IN ARREST AND DETENTION OFTEN LEADS TO TRAGIC CONSEQUENCES.

A. Persons with Many Types of Disabilities Face Dangerous and Sometimes Lethal Outcomes When Law Enforcement Officers Fail to Take Disability into Account.

Hundreds of Americans with disabilities die every year in police encounters, and many more are seriously injured. Many of these deaths and injuries are needless, the tragic result of police failing to use well-established and effective law enforcement practices that take disability into account. Such practices are widely underenforcement

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diabetes,¹⁸ cerebral palsy,¹⁹ and disabilities resulting

S O D L T O I W I L A D A • V a i m as to whether police officers had knowledge of S O D L T O I W I L A D A • V a i m and that she was about to have a seizure when they placed her alone in the back of a van after arresting her); *a* H.R. Rep. No. 101-485, pt. 3, ¶ note 6, at 50; *e a* 136 Cong. Rec. 11,461 (1990) (statement of Rep. Mel Levine) • 3 H U M R E P I V s y who are having seizures are often inappropriately dealt with by the S R O L F H μ *a* 136 Cong. Rec. 11,471 (1990) (statement of Rep. Steny Hoyer) • > 3 @ H U D V H R @ V e p i l e p s y are sometimes inappropriately arrested because police officers have not received proper training to recognize seizures and to respond to them. In many situations, appropriate training of officials will avert discriminatory D F W L R Q V μ

¹⁸ *Ga v Bd*, 490 U.S. 386, 388 §9, 397 (1989) (vacating directed verdict for law enforcement officers in section 1983 claim brought by diabetic individual who sustained a broken foot, cuts on his wrists, a bruised forehead, and an injured shoulder when arrested by police who misperceived his behavior during an insulin reaction); Gina Damron & Tammy Stables Battaglia, *Cp Ba Da tStu Atg s; O D Q L W Bd Sq a Ma s b Dd*, Detroit Free Press, Sept. 22, 2008 (describing how a man with diabetes who experienced a hypoglycemic episode while driving was allegedly thrown headfirst into the ground, resulting in brain injury leaving him comatose, despite the officers seeing his insulin pump and diabetes equipment in the vehicle).

¹⁹ Natalie Neysa Alund, *Man Ag Fa Ab bb Cy Rsb tv Cba Pa Isb Sfy 4 Ob*, Knoxville News-Sentinel, June 6, 2011, at A1 (describing how a man with cerebral palsy accidentally hit a dog while driving, and subsequently tried to report the incident but was arrested for drunk driving despite efforts to reassure the officers that he was disabled); *Baz v Ab*, No. 00 C 50365, 2002 WL 1803741, at *1 (N.D. Ill. Aug. 6, 2002) (denying G H I H Q G D Q W V motion for summary judgment on Section 1983 excessive force claim where officer repeatedly tried to pull the left arm of a woman with cerebral palsy behind her back, despite encountering resistance and being told by the woman that it

entity against a disabled L Q G L Y L G X D O μ

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Persons with autism spectrum disorder (ASD) also face physical injury and death when their behavior is misinterpreted during encounters with law enforcement. An autistic person may take longer to process and understand information, and may be unable to follow instructions promptly.²⁰ An autistic person may take instructions very

communicate or comply.²³ The result can be death.²⁴

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translates to hundreds of deaths annually.³⁰

B. Experience Shows and Many Experts and Police Departments Recognize That Public Safety is Enhanced When Police Modify Their Tactics When Arresting or Detaining Persons with Disabilities.

Many tragic deaths and injuries of people with disabilities are avoidable. As experts and law enforcement have recognized, there are safe and effective ways for police officers to do their jobs a take disability into account. Across the country, law enforcement agencies are adopting practices that improve safety when police encounter persons with disabilities. Often these practices are implemented to help police departments comply with the ADA. For example, for deaf and hard of hearing individuals, police departments are contracting with agencies to provide on-call interpreters, handcuffing individuals in front when safe, and using pictograms in the field.³¹ Similarly, communication cards are being

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³¹ See Press Release, U.S. ' H Sof Justice, Jic Dep in e
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La Ec w Cw in Iv Pp a Wb Ae De o f
Ha b Hla (Aug. 5, 2013), a va th
<http://www.justice.gov/opa/pr/justice-department-reaches-settlement-city-henderson-nev-improve-law-enforcement>; Press Release, U.S. ' H Sof Justice, Jic Dep He e c
Str Iv Tw Cw La deEc w Ag b in
Ip Cw Iv Pp a Wb Ae De o Ha fb d
Ha (Mar 21, 2013), a a [http://www.justice.gov/bb/opa/pr/justice-department-reaches-settlement-two-coln45.37\(t\)3\(w\)-4\(o\)](http://www.justice.gov/bb/opa/pr/justice-department-reaches-settlement-two-coln45.37(t)3(w)-4(o))] TJETB

used to facilitate communication between officers and persons with autism spectrum disorder or intellectual disability.³² Training helps prepare officers to deal with individuals with diabetes.³³

To ensure safe and nondiscriminatory interactions with persons with mental disabilities such as autism, intellectual disability, or mental illnesses, police departments are using crisis intervention and de-escalation strategies. These strategies rely on the use of time, containment, communication with the individual, and coordination with trained staff, to reach

policing tactics are widely accepted,³⁶ and have been shown to be safer for both police officers and persons with disabilities.³⁷ See, e.g., Katharine Ball, *Police*

Off. (Aug. 29, 2014), *at* <http://www.justice.gov/opa/pr/court-approves-police-reform-agreement-portland-oregon>; Settlement Agreement and Stipulated [Proposed] Order of Resolution at ¶¶ 130-37, *United States v. City of Seattle*, Civil Action No. 12-CV-1282 (W.D. Wash. July 27, 2012). Bill continue to provide Crisis Intervention training as needed to ensure that CI trained officers are available on all shifts to respond to incidents or calls involving individuals known or suspected to have a mental illness, substance abuse, or a behavioral crisis. CI training will continue to address field evaluation, suicide intervention, community mental health resources, crisis de-escalation, and scenario exercises, *μ a* http://www.justice.gov/crt/about/spl/documents/spd_consentdecree_7-27-12.pdf.

³⁶ Janet R. Oliva, et al., *A Path to De-Escalation in Police Work*

Salinas (Salinas), June 3, 2014, at A3 (. . . Police wrapped up a 90-minute standoff with a man said to be suicidal Monday morning by convincing him to toss aside his knife and surrender[.] . . . Members of the Hostage Negotiation Team and the Crisis Intervention Team also arrived on the scene. Both teams are specially trained to deal with people suffering from mental illnesses or developmental disabilities. A Crisis Team supervisor from Monterey County Behavioral Health Division also assisted. . . . Uninjured, the man was taken to a local hospital for psychiatric

C. Police Officers Detaining or Arresting People with Psychiatric Disabilities Should Be Prepared to Take the Disability into Account.

Police departments and police officers should be prepared to use practices designed to improve safety in police encounters with people with psychiatric disability. This is especially true when officers detain individuals for the purpose of involuntary mental health treatment. As the City itself notes, there are tens of thousands of

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 (U.S. ' H S J W Justice, Bureau of Justice Assistance, Practitioner Perspectives Ser. No. NCJ 182501, 2000) (crisis intervention in Memphis has led to the reduced use of deadly force, and fewer injuries to officers); Deborah L. Bower, et al., *Tb Abq*
Pb ' H S D U W P K Q W • / *Ta* A R p m Ca , *d*
 FBI Law Enforcement Bulletin 2 (Feb. 2001) (reporting that police shootings declined in Albuquerque after introduction of CIT); *e a* Compton, *pb* note 36,

involuntary psychiatric detentions annually in California alone. Pet. for Cert. at 22 ¶3. It is common for these detentions to involve sending officers into people's homes.³⁸ Because the psychiatric detention is involuntary, police may reasonably expect to encounter resistance. That an individual may be resisting detention, even with a weapon, does not make crisis intervention and de-

The legal obligation the ADA places on public agencies has helped speed the creation and use of police practices that are saving lives and preventing the injury of people with disabilities. *Cf. Bd. of Trustees of the Univ. of Ala. v Gaa*, 531 U.S. 356, 375 (2001) (Kennedy, J., concurring). One of the undoubted achievements of statutes designed to assist those with impairments is that citizens have an incentive, flowing from a legal duty, to develop a better understanding, a more decent perspective, for accepting persons with impairments or disabilities. **LOWR W K H** **Creating a Special Reception Unit** to the ADA for arrest or detention would relieve much of that pressure, to the likely long-term detriment of all.

Standard Operating Procedure, Gen. 522.01 (Feb. 8, 2007) at 2 (describing assessment and collection of weapons information as part of CIT response), both available at <http://www.cit.memphis.edu/policies.php?page=1>; Evan Sernoffsky, *Deaf Suspect in a Bee-Eat*, S.F. Chron., Sept. 25, 2014, at D1. Responding officer . . . found Laffey crouched in the apartment with a 12-inch serrated knife, yelling, I have the knife and **GR** **One** **Wear** me, Banayat said. Rather than confronting Laffey . . . the officer called for **D F N** **X** **S** **at** to a covered position, and resolved the crisis without deadly force); Ball, *id.*, at 11.B.

III. THERE ARE TRIABLE FACT QUESTIONS ON WHETHER THE CITY SHOULD HAVE TAKEN MS. 6 + ((+ \$ 1 • 6 DISABILITY INTO ACCOUNT WHEN DETAINING HER.

A. San Francisco • Position That it is Entitled to Summary Judgment is Inconsistent w

apartment; and (2) Ms. Sheehan could have been gathering up ~~· R W K C U r M e a p~~ the officers
K D G e n t o W P R X Q W

this case. Nevertheless, the United States suggests that this Court carve out an exception in which crisis intervention and related techniques are assumed to not be reasonable if the person with the disability is armed or violent. Br. of the United States at 17 ¶1. But crisis intervention and the other techniques described in this brief have been specifically designed to reduce the dangers involved in the arrest or detention of a person with a psychiatric disability, even if armed and violent.⁴³ Moreover, the *Ab* analysis already takes into account any particular dangers or exigencies. This Court should not create a presumption that taking disability into account in such situations is *de h* unreasonable. Such a presumption would only serve to discourage the use of these life-saving techniques.

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B. The Writ of Certiorari On the First Question May Have Been Improvidently Granted.

In its Petition, the City asked this

apparently that the Ninth Circuit's

CONCLUSION

For the

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Association is the largest, most prominent nongovernmental organization that deals with the treatment and impact of diabetes. The Association establishes and maintains the most authoritative and widely followed clinical practice recommendations, guidelines, and standards for the treatment of diabetes. The Association publishes the most authoritative professional journals concerning diabetes research and treatment.

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

strongly support the application of evidence-based crisis intervention as a critical tool for police and law enforcement when complying with and enforcing the Americans with Disabilities Act.

Disability Rights Advocates (DRA) is a non-profit public interest legal center that specializes in high impact civil rights litigation and other advocacy on behalf of persons with disabilities throughout the United States. DRA works to end discrimination in areas such as access to public accommodations, public services, employment, transportation, education, employment, technology and housing. **' 5 \$ • V F O L and O W V of d i r e c t o r s D i n c l u d e** people with various types of disabilities. With offices in Berkeley, California and New York City, DRA strives to protect the civil rights of people with all types of disabilities.

Disability Rights Education and Defense Fund, Inc., (DREDF) is a national disability civil rights law and policy organization dedicated to securing equal citizenship for people with disabilities. Since its founding in 1979, DREDF has pursued its mission through education, advocacy and law reform efforts. Nationally recognized for its expertise in the interpretation of federal disability civil rights laws, DREDF has consistently worked to promote the full integration of citizens with disabilities into the American mainstream, and to ensure that the civil rights of persons with disabilities are protected and advanced.

The **Epilepsy Foundation** is a nonprofit corporation founded in 1968 to advance the interests the over 2.8 million Americans with epilepsy and seizure disorders. With its affiliates throughout the

Mental Health America (MHA), formerly the National Mental Health Association, is a national membership organization composed of individuals with lived experience of mental illnesses and their family members and advocates. **7 K H Q D W L R Q • V** and largest nonprofit mental health organization, MHA has over 200 affiliates who are dedicated to improving the mental health of all Americans, especially the 54 million people who have severe mental disorders. Through advocacy, education, research, and service, MHA helps to ensure that people with mental illnesses are accorded respect, dignity, and the opportunity to achieve their full potential. MHA is particularly concerned that careful crisis intervention procedures be used in taking a person in acute emotional distress into custody and that a remedy be available when police fail to do so.

The **National Association of the Deaf (NAD)**, founded in 1880, is the oldest civil rights organization in the United States, and is the nation's premier organization of, by and for deaf and hard of hearing individuals. The mission of the NAD is to preserve, protect, and promote the civil, human and linguistic rights of 48 million deaf and hard of hearing individuals in the country. The NAD endeavors to achieve true equality for its constituents in all aspects of society including but not limited to education, employment, and ensuring full access to programs and services. Serving all parts of the USA, the NAD is based in Silver Spring, MD and more information is available at: www.nad.org

The mission of the **National Coalition for Mental Health Recovery** is to ensure that consumer/survivors have a major voice in the development and implementation of health care, mental health, and social policies at the state and national levels, empowering people to recover and psychiatric disabilities who are disproportionately affected when law enforcement fails to take disability into account when responding, we have a keen interest in ensuring that Title II of the Americans with Disabilities Act (ADA) is upheld, requiring reasonable modifications of police practices and requiring that police use proven crisis intervention and de-escalation practices in interaction with persons with disabilities or anyone suspected of having a disability.

The **National Council for Behavioral Healthcare** represents 2,250 behavioral healthcare individuals more than 8 million adults and children with mental illnesses. The National Council promotes public policies that improve and strengthen mental health and addictions treatment by promoting access to high-quality, cost-effective community-based treatment and supports. The National Council also works to improve the police response to people with mental illness. The National Council believes that police departments should adopt crisis intervention and de-escalation practices that enhance the safety of people with disabilities, police officers, and the public.

The **National Council for Independent Living** (NCIL) is a **SPH UDLE D** cross-disability, grassroots organization run by and for people with disabilities. Founded in 1982, NCIL represents more than 700 organizations and individuals from every state and territory, including Centers for Independent Living (CILs), Statewide Independent Living Councils (SILCs), individuals with disabilities, and other organizations that advocate for the rights of people with disabilities throughout the United States. NCIL envisions a world in which people with disabilities are valued equally and participate fully. NCIL is vitally interested in protecting rights gained in the Americans with Disabilities Act and in

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The **National Federation of the Blind** is the largest organization of blind and low-vision people in the United States. Founded in 1940, the NFB has grown to over fifty-thousand members. The organization consists of affiliates and local chapters in every state, the District of Columbia, and Puerto Rico. The NFB devotes significant resources toward advocacy, education, research, and development of programs to integrate the blind into society on terms of equality and independence, and to remove barriers and change social attitudes, stereotypes and