**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA**

WILLIAM MATHIS and KENNEDY DAVIS, *individually and on behalf of all others similarly situated*,

*Plaintiffs*,

v.

U.S. PAROLE COMMISSION, et al.,

*Defendants*.

**REDACTED**
Case No. 1:24-01312 (TNM)

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' COMBINED REPLY IN SUPPORT OF PARTIAL SUMMARY JUDGMENT AND OPPOSITION TO DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT**

# TABLE OF CONTENTS

**Page**

# TABLE OF AUTHORITIES

**Page(s)**

## CASES

**STATUTES**

**RULES**



**REGULATIONS**

## INTRODUCTION

This case turns on the answer to one simple question: whether federal agencies that supervise people with disabilities fail to provide reasonable accommodations so those individuals have an equal opportunity to succeed on supervision. In granting a preliminary injunction, this Court held that requiring people with disabilities "to navigate supervision without offering reasonable accommodations" violates the Rehabilitation Act. ECF No. 31 at 11. In certifying a class, this Court found that Plaintiffs alleged a "system-wide failure to assess and accommodate disabilities" that "permeates the entire supervision system, harming all class members at every turn." ECF No. 47 at 10-12. Now, with a full summary judgment record, the undisputed evidence confirms that Defendants do not consistently and reliably identify disabilities, assess accommodation needs, or provide accommodations to the class. Summary judgment on liability should be granted to Plaintiffs.

Defendants' opposition only confirms the strength of Plaintiffs' case. On the merits, Defendants' arguments rest on obviously incorrect premises that are easily refuted by the record, the class definition, or the prior decisions of the Court. Defendants contend that Plaintiffs—a class of supervisees "with a disability," *id.* at 17—are not disabled, but Defendants' own records show otherwise. Defendants also contend that Plaintiffs are not qualified for parole and supervised release, despite this Court's definition of the class as people "who are on or will be on parole or supervised release." *Id.* Defendants do not dispute (because they cannot) that they lack formal policies or procedures for assessing and providing accommodations and, as a result, routinely fail to do so. Instead, they contend that other factors contributed to Plaintiffs' downstream harms of revocation and incarceration—an argument this Court has already twice rejected as focused on the wrong injury. Defendants also continue to insist that ad hoc accommodations suffice, but record

evidence overwhelmingly shows otherwise as a matter of both law and fact. And Defendants contend that they have no duty at all to accommodate individuals whose disabilities are known and obvious until those individuals request a specific accommodation, but precedent refutes that claim. Defendants attempt to assert a defense of "undue burden," but they fail to support that defense with evidence and it is belied by their very own brief, which promises (at 27-28) to implement "sweeping measures" to do exactly what Defendants claim is an "undue burden."

Unable to defend their practices on the merits, Defendants seek to distort the record and manufacture factual disputes. They ask this Court to exclude Plaintiffs' expert, Kelly Mitchell, despite her decades of experience administering prison, parole, and probation systems consistent with federal disability law. Defendants also ask the Court to consider two new declarations that contradict prior testimony by the very same witnesses. The Court should decline those requests.

Finally, Defendants resort to a series of procedural and quasi-jurisdictional arguments that are meritless. They claim that there is no remedy available to Plaintiffs, even though this Court has already determined it has the power to grant injunctive relief. They contend that the case is "prudentially moot" based on reforms their own declarations admit have not yet been implemented. And they invoke an abstention doctrine intended to protect state administrative agencies' implementation of state law in a case involving federal agencies' compliance with a federal statute—an argument that borders on frivolous.

The Court should grant summary judgment to Plaintiffs on liability, deny Defendants' cross-motion for summary judgment, and set a status conference to address remedy proceedings.

## ARGUMENT

### I. PLAINTIFFS ARE ENTITLED TO SUMMARY JUDGMENT ON LIABILITY AND DEFENDANTS ARE NOT

Plaintiffs are entitled to summary judgment because there is no genuine dispute on any of the four elements of a Section 504 Rehabilitation Act claim: "(1) [Plaintiffs] are disabled within the meaning of the Rehabilitation Act, (2) they are otherwise qualified, (3) they were excluded from, denied the benefit of, or subject to discrimination under a program or activity" by reason of their disability, "and (4) the program or activity is carried out by a federal executive agency or with federal funds." *Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1266 (D.C. Cir. 2008); 29 U.S.C. § 794(a). Defendants concede the last factor, as they must. Summary judgment is proper for Plaintiffs on the other three. *First*, the Plaintiff class consists of individuals with disabilities both by virtue of the class definition and because the record evidence, including Defendants' own records, shows Plaintiffs have severe impairments that substantially limit major life activities. *Second*, this Court already held Plaintiffs are qualified for supervision, and Defendants make no coherent argument otherwise. *Third*, there is no genuine dispute that Plaintiffs are excluded from, denied the benefit of, or subject to discrimination by reason of their disabilities because there is no genuine dispute that Defendants routinely fail to accommodate individuals with disabilities on supervision, depriving them of an equal opportunity to succeed on supervision.

Finally, Defendants are not entitled to summary judgment because Plaintiffs have offered proof of each element of their claim. *See, e.g.*, *Baylor v. Powell*, 459 F. Supp. 3d 47, 53 (D.D.C. 2020) (requiring "'[a] complete failure of proof concerning an essential element of the nonmoving party's case'" to "entitle[] the moving party to 'judgment as a matter of law'" (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986))), *aff'd*, 847 F. App'x 7 (D.C. Cir. 2021). Further,

Plaintiffs did not need to move for summary judgment on Defendants' undue burden defense, which Defendants have not adequately supported in any event.

### A. Plaintiffs Are Disabled Under the Rehabilitation Act

There is no genuine dispute that the entire class by definition, as well as named Plaintiff Kennedy Davis and the example supervisees discussed in Plaintiffs' summary judgment motion, have disabilities. Defendants' contentions (at 11-12) that Plaintiffs have not "adequately documented their disabilities" and that a "diagnosis" or "medical evidence" are required fail.

*First*, Defendants "admit that the class, by definition, includes 'all people with a disability.'" SUMF Resp. ¶ 35.[1] There are no people without disabilities in the class. Moreover, Defendants' own papers show that a significant percentage of the supervised population has disabilities. *Id.* ¶¶ 40-42.

*Second and independently*, Defendants' own records corroborate those disabilities. With respect to Davis, Defendants admit that CSOSA's records reveal that Davis was "[redacted]

[1] Citations to "SUMF" refer to Plaintiffs' SUMF, ECF No. 62-1. Citations to "SUMF Resp." refer to Defendants' Response to Plaintiffs' SUMF, ECF No. 74-2. Citations to "SUMF Reply" refer to Plaintiffs' Reply to Defendants' Response to Plaintiffs' SUMF, concurrently filed with this brief. Citations to "Defs.' SUMF" refer to Defendants' SUMF, ECF No. 74-1. Citations to "Pls.' Resp. to Defs.' SUMF" refer to Plaintiffs' Response to Defendants' SUMF, concurrently filed with this brief.

[redacted] Defendants do not offer any contrary evidence that Davis lacks a qualifying disability. *See* Defs.' SUMF ¶¶ 75-89.

Defendants' assertion that Plaintiffs' example supervisees' disabilities are not properly documented is starkly at odds with Defendants' own records. Defendants *themselves* identified these individuals as having disabilities. In response to Plaintiffs' request for "Documents . . . that concern individuals on Supervision identified by the Commission or CSOSA as having a Disability," Defendants produced "the supervision files . . . for those individuals identified by CSOSA" for purposes of this case "as having a mental Disability that post-date June 1, 2022, or were on mental health supervision after that date," Pls.' Ex. 44 (Defs.' RFP Resps.) at 2-3, as well as records of individuals "with indications of disability," Pls.' Ex. 15 (Defs.' July 11, 2025 Updated Narrative Resp. to Pls.' RFP) at 3. The evidence regarding Supervisees 1-10 comes directly from that production.

What's more, Defendants admit in their filings that many of these individuals have disabilities as documented in their records. For example, Defendants admit that CSOSA's records show that [redacted] They admit that CSOSA's records show that [redacted] And they admit that the Commission's records show that [redacted]

[redacted]

Defendants now attempt to deny that some of these individuals have qualifying disabilities, but those assertions are unreasoned, unsupported, and contrary to Defendants' own records. For instance, Defendants admit that [redacted] Defendants likewise admit [redacted]

*Third*, while Defendants contend (at 12) that a "proper diagnosis" or "medical documentation" is required, the law does not support that proposition. As numerous courts have explained, "[t]here is certainly no general rule that medical testimony is always necessary to establish disability." *Katz v. City Metal Co.*, 87 F.3d 26, 32 (1st Cir. 1996); *see Sutherland v. Peterson's Oil Serv., Inc.*, 126 F.4th 728, 739 (1st Cir. 2025) ("[T]here is 'no per se rule about either the type or quantum of evidence' a plaintiff needs to establish that an impairment exists." (citation omitted)). Many disabilities are obvious or can be proved by other evidence. *See Marinelli v. City of Erie*, 216 F.3d 354, 361 (3d Cir. 2000) (no medical evidence necessary if lay jury could

understand the injury); *Tesone v. Empire Mktg. Strategies*, 942 F.3d 979, 996 (10th Cir. 2019) (similar). For example, the D.C. Circuit has held that whether "the visually impaired are disabled" is "self-evident": no medical evidence required. *Am. Council of the Blind*, 525 F.3d at 1266.

Defendants offer no authority to support their claim that proof of disability requires specific documentation, and their cases provide no support for that position. In *Reyes v. Krasdale Foods, Inc.*, there was no dispute that the plaintiff had a disability. 945 F. Supp. 2d 486, 492 (S.D.N.Y. 2013) ("The parties agree plaintiff is disabled."). The only dispute was whether the specific accommodation requested was necessary for plaintiff's Type 1 diabetes. *Id.* at 493. That case says nothing about whether a medical diagnosis is required. What documentation, if any, may be required to support an accommodation request has no bearing on whether an individual has a disability under the Rehabilitation Act. The Sixth Circuit's unpublished decision in *Carten v. Kent State Univ.*, 78 F. App'x 499 (6th Cir. 2003), is no more helpful to Defendants. That court's statement about the need for a "proper diagnosis" came in the context of a summary judgment record that "d[id] not indicate that [the plaintiff] had a learning disability" and, in fact, revealed that the plaintiff "was not found to have a learning disability" in previous years. *Id.* at 501. By contrast here, Defendants have not submitted any evidence calling into question Plaintiffs' disabilities—instead, their own records acknowledge them.

**B. Plaintiffs Are Otherwise Qualified For Defendants' Federal Program**

Despite baldly asserting (at 13) that "Plaintiffs fail to establish that they are 'otherwise qualified'" for supervision, Defendants make no argument that Plaintiffs are not "otherwise qualified"—nor could they. Defendants' arguments in this section of their brief focus exclusively on other issues, such as whether Plaintiffs requested or were provided accommodations. In any event, an individual is "qualified" for a program if they meet "the essential eligibility requirements

for participation in, or receipt of benefits from, that program or activity." 28 C.F.R. § 39.103. As the Court explained at the preliminary injunction stage, Plaintiffs "have been placed on supervision and are subject to its terms. So they meet the essential eligibility requirements established by the Government to participate in supervision" and are thus "otherwise qualified" for it. ECF No. 31 at 10. Indeed, Defendants did not contest this element at the preliminary injunction stage, *see* ECF No. 16 at 3-9, and admitted it in their Answer with respect to Davis, SUMF Resp. ¶ 30 (citing Ans. ¶¶ 4, 95-96). As for the rest of the Class, they are definitionally "otherwise qualified" because, in order to be class members, they "are on or will be on parole or supervised release in the District of Columbia under [Defendants'] supervision." SUMF ¶ 34 (citing ECF No. 47 at 5-6, 18).

There is thus no dispute Plaintiffs satisfy this element, and given Defendants' failure to make any argument or identify any evidence to the contrary, they are not entitled to summary judgment. Fed. R. Civ. P. 56(a); *USV Pharm. Corp. v. Sec'y of Health, Ed. & Welfare*, 466 F.2d 455, 461 (D.C. Cir. 1972) ("[T]he moving party has the burden of presenting evidence that establishes his right to summary judgment . . . [and] may not, by the bare assertion that he is entitled to summary judgment, shift to his opponent the burden of establishing the contrary.").

### C. Plaintiffs Are Excluded From, Denied The Benefit Of, Or Subject To Discrimination Throughout The Supervision Process By Reason Of Their Disabilities

There is no genuine dispute that individuals with disabilities face obstacles to success on supervision, which is all that is required to prove this element of Plaintiffs' claim. This Court has repeatedly confirmed that "requiring [supervisees] to navigate supervision without offering reasonable accommodations" *is* discrimination. ECF No. 31 at 11; *see* ECF No. 47 at 5. Defendants do not dispute that they failed to accommodate the disabilities of the supervisees discussed in

Plaintiffs' motion or that they have no formal policies or procedures to assess and provide accommodations.

Instead, Defendants advance three arguments. First, they contend that because other factors contributed to some supervisees' downstream harms of revocation and incarceration, those supervisees did not experience discrimination—an argument this Court has already twice rejected. Second, Defendants assert that they have an ad hoc accommodations process, but they do not address the case law holding that such a process is insufficient where, as here, it routinely results in individuals being denied reasonable accommodations. Third, Defendants disclaim any obligation to accommodate people absent a request for a specific accommodation. But the law does not require a request where disabilities are obvious or known. At a minimum, Defendants are certainly not entitled to summary judgment, as there is not a complete absence of evidence on this element. *Baylor*, 459 F. Supp. 3d at 53.

### 1. There Is No Genuine Dispute That Supervisees Face Obstacles To Success On Supervision Due To Their Disabilities

#### a. Defendants Ignore This Court's Clear Prior Decisions and Erroneously Focus on Downstream Consequences, Rather Than The Denial of Equal Treatment During Supervision

This Court already ruled that the relevant question is whether people face obstacles to navigating day-to-day supervision solely due to their disabilities, ECF No. 31 at 1; contrary to Defendants' contention (at 15-16), supervisees do not need to prove disability is the sole cause of downstream harms like revocation. As this Court explained, "the Government injured [named Plaintiffs] by requiring them to navigate supervision without offering reasonable accommodations." ECF No. 31 at 11. Thus, Plaintiffs' injury "ripened the moment their disabilities made it harder for them—compared to their nondisabled counterparts—to participate in the Government's supervision programs without reasonable accommodations." *Id.* at 11-12; *see Am.*

*Council of the Blind*, 525 F.3d at 1270; *Bonnette v. D.C. Ct. of Appeals*, 796 F. Supp. 2d 164, 187 (D.D.C. 2011) (collecting cases and holding that requiring individuals with disabilities to operate "under discriminatory conditions," including by failing to provide reasonable accommodations, "is itself a form of irreparable injury"). What matters is that, due to their disabilities, Plaintiffs face obstacles to success on supervision because Defendants fail to provide accommodations—i.e., Defendants deny them the opportunity to succeed. *See Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 266 (D.D.C. 2015) ("'[A]ccommodations . . . must be sufficient to provide a disabled person with an 'equal *opportunity* to obtain the same result, to gain the same benefit, or to reach the same level of achievement' as a person who is not disabled." (emphasis added) (quoting *Alexander v. Choate*, 469 U.S. 287, 305 (1985))).

By contrast, whether Plaintiffs would have successfully completed supervision even *without* an accommodation—or whether they would have still been incarcerated even *with* an accommodation—is immaterial. "Lack of meaningful access is *itself* the harm . . . regardless of whether any additional injury follows." *Luke v. Texas*, 46 F.4th 301, 306 (5th Cir. 2022). For example, a plaintiff who could not understand meetings with his probation officer was injured, even though he "successfully . . . completed the terms of his probation." *Id.* (citation omitted); *see also Robertson v. Las Animas Cnty. Sheriff's Dep't*, 500 F.3d 1185, 1199 (10th Cir. 2007) (reversing grant of summary judgment to defendants where plaintiff with hearing disability "was denied the ability to participate in his probable cause hearing to the same extent as non-disabled individuals," even though his lawyer attended the hearing and the hearing resulted in dismissal of all charges); *cf. Am. Council of the Blind*, 525 F.3d at 1270 (rejecting the "astounding proposition" that "the visually impaired have not been denied meaningful access to U.S. paper currency in view of the absence of evidence of their being frequently defrauded"). As this Court has repeatedly

warned, Defendants "fundamentally misapprehend[] the core of this case" by "continu[ing] to focus on downstream maladies, despite the Court's unequivocal statement that "[t]he 'denial of equal treatment' itself counts as an injury." ECF No. 47 at 13-14; *see also* ECF No. 31 at 11.

**b. There Is No Genuine Dispute That Defendants Fail To Accommodate Supervisees With Disabilities**

Plaintiffs' motion sets out "a small sample of Defendants' routine failure to accommodate," detailing the experiences of ten supervisees. Pls.' Br. 14-20. In response, Defendants fail to raise any material dispute of fact that Defendants knew these supervisees had disabilities yet provided no accommodations. To highlight a few examples:

- Defendants admit that [redacted]
- Defendants admit that [redacted]
- Defendants admit they [redacted]

- Defendants admit that [redacted]

These examples are just the tip of the iceberg. Pls.' Br. 15-20; [redacted] As they reveal, there is no genuine dispute that Defendants routinely fail to accommodate people with known disabilities.

**c. Defendants Admit They Have No Formal Processes To Ensure Supervisees With Disabilities Reliably And Consistently Receive Needed Accommodations**

Defendants' failures to accommodate these supervisees should come as no surprise because Defendants have no system to reliably and consistently provide accommodations. As this Court has recognized, this case is about Defendants' "system-wide failure to assess and accommodate disabilities." ECF No. 47 at 12. Thus, the key question is whether Defendants have "a cogent

system of accommodating disabilities that [they have] applied to 'many' plaintiffs." *Id.* As the summary judgment record shows, they do not. *See* Pls.' Br. 11-34.

Defendants essentially admit as much. They admit that neither CSOSA nor the Commission has "put in place *any guidance, instructions, or policies regarding disabilities*—including . . . assessing . . . disability-related accommodation needs . . . , requiring provision of reasonable accommodations . . . , or providing a means by which people with disabilities can request reasonable accommodations." SUMF Resp. ¶ 190 (emphasis added); *see id.* ¶ 212 (admitting that "Defendants do not have an official, standardized system for assessing whether and what types of accommodations people on supervision require"). There is no shortage of evidence on this point; more is set forth in the margin.[2] Absent such processes, Defendants cannot ensure that supervisees reliably and consistently receive needed accommodations. *See* SUMF ¶ 179.

In an apparent attempt to limit the damage from the admissions about Defendants' lack of policies, Defendants repeatedly contend that facts in the SUMF are "immaterial" when they touch on the existence of policies. *See, e.g.*, SUMF Resp. ¶¶ 194, 262. As a threshold matter, simply characterizing a fact as immaterial is "patently insufficient to controvert the truth of the matters identified." *Herrion v. Children's Hosp. Nat'l Med. Ctr.*, 786 F. Supp. 2d 359, 362 (D.D.C. 2011),

---

[2] *See* SUMF Resp. ¶ 193 (no CSOSA policy for "consider[ing] disabilities when setting the details of supervision requirements"); *id.* ¶ 181 (no Commission process for providing reasonable accommodations); *id.* ¶ 213 ("exhaustive search" dating back nine years revealed no CSOSA guidance regarding evaluating whether people on supervision need reasonable accommodations); *id.* ¶ 214 (no CSOSA training on how to determine appropriate accommodations or to provide them); *id.* ¶ 222 (no guidance for either Defendant regarding the provision of notice to supervisees of their rights under the Rehabilitation Act); *id.* ¶ 227 (no CSOSA policy regarding how CSOs should "decide whether to grant or deny an accommodations request."); *id.* ¶ 233 (no Commission grievance process); *id.* ¶ 236 (no disability accommodations coordinator for either Defendant); *id.* ¶ 242 (no CSOSA training on how to determine appropriate accommodations, to provide them, to assess them, or to communicate about them with the Commission); *id.* ¶¶ 250, 260 (no CSOSA tracking); *id.* ¶¶ 258-60 (no Commission tracking).

*aff'd*, 448 F. App'x 71 (D.C. Cir. 2011); *Jankovic v. Int'l Crisis Grp.*, 72 F. Supp. 3d 284, 291 (D.D.C. 2014) (treating "facts as conceded" where a party deems facts immaterial because "this response does not raise a genuine issue of material fact"), *aff'd*, 822 F.3d 576 (D.C. Cir. 2016). In any event, "[a] matter is immaterial" only when it is "not relevant." *United States ex rel. K & R Ltd. P'ship v. Mass. Hous. Fin. Agency*, 456 F. Supp. 2d 46, 51 (D.D.C. 2006), *aff'd*, 530 F.3d 980 (D.C. Cir. 2008). And "relevant evidence" is evidence that has "'any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable.'" *Old Chief v. United States*, 519 U.S. 172, 178 (1997) (quoting Fed. R. Evid. 401). Whether Defendants have a mechanism for providing accommodations on a class-wide basis is plainly relevant. Yet Defendants routinely fail to admit or deny facts related to that issue.

Take, for example, ¶ 262 of Plaintiffs' SUMF, which states that "CSOSA stated that there is 'no formal directive' for CSOs to communicate to the Commission that a supervisee needs accommodations." Whether CSOSA has a formal policy of communicating accommodation needs to the Commission is relevant to whether the agencies discriminate on the basis of disability. If CSOSA does not routinely communicate accommodation needs to the Commission, that makes it far less likely the Commission will accommodate those known disabilities when making revocation decisions or setting supervision conditions. *See* Pls.' Ex. 14 (Mitchell Rep.) at 23.[3]

Another example is the fact that "[i]n response to a request for 'all [d]ocuments to support the Commission's contention' that it assesses disabilities and 'provide[s] reasonable accommodations where appropriate,' the Commission . . . responded that 'it has no way of identifying such individuals as accommodations are assessed and provided on a case-by-case basis

[3] Defendants' criticisms of Kelly Mitchell's qualifications and expert report are baseless and addressed *infra* in Section II.A.

and are not searchable.'" SUMF Resp. ¶ 268 (citation omitted). That assertion goes to *Defendants' own argument* that they make ad hoc accommodations. These facts are plainly material, and they reinforce Defendants' lack of a class-wide accommodations process.

**2. Defendants' Ad Hoc Accommodations Are Legally And Factually Inadequate**

Unable to deny they have no formal accommodations process, Defendants contend they have an "ad hoc system." Defs.' Br. 1; *see id.* at 11. But as Plaintiffs explained, "reliance on ad hoc accommodations rather than planning in advance to meet the needs of people with disabilities," is "'both legally inadequate and practically unrealistic.'" *Brooklyn Ctr. for Indep. of Disabled v. Bloomberg*, 980 F. Supp. 2d 588, 642-44 (S.D.N.Y. 2013) (citation omitted); *see* Pls.' Br. 33. By failing to respond to Plaintiffs' legal argument that ad hoc accommodations are legally insufficient, Defendants have conceded any contrary argument. *See, e.g.*, *Gandhi v. CMS*, 665 F. Supp. 3d 49, 58 (D.D.C. 2023) (court may treat argument to which a party fails to respond as conceded).

Even assuming ad hoc accommodations could legally suffice in some circumstances, Defendants cannot show that they offer such accommodations—let alone reliably and consistently. *See supra* Sections I.C.1.b-c. Defendants' handful of example "accommodations" do not raise a genuine dispute of material fact as to Defendants' failure to provide accommodations class-wide.

*First*, multiple assertions in Defendants' brief are unsupported by any record citation and thus should be disregarded. *See* Defs.' Br. 14 (asserting, without citation, that there are "instances in which CSOSA did allow for telephonic check in or traveled directly to supervisee to check-in, as well as instances where Supervisees were referred to various mental health and other

services").[4] "It is [the party's] obligation, and not this Court's, to locate and cite to the appropriate portions of the record that support [the party's] arguments on summary judgment." *Thorp v. District of Columbia*, 319 F. Supp. 3d 1, 10 (D.D.C. 2018), *aff'd*, 788 F. App'x 8 (D.C. Cir. 2019); *see United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) ("Judges are not like pigs, hunting for truffles buried in briefs."). Because Defendants fail to cite any record support, this Court need not consider those assertions. In any event, the record shows multiple instances where Defendants did *not* allow telephonic check-ins or travel to the supervisee despite known disability-related barriers, including mobility issues. *See* SUMF Resp. ¶¶ 54-55, 95; Pls.' Ex. 11 (Davis Decl.) ¶¶ 21, 26; Pls.' Ex. 40 (Mathis Decl.) ¶ 12.[5]

*Second*, Defendants have adduced no evidence that they have provided any actual accommodations. Rather, Defendants suggest that individual CSOs have made occasional, one-off

---

[4] Defendants suggest in the following sentence that Plaintiffs' expert, Kelly Mitchell, testified that she observed instances of "CSOs allow[ing] for virtual check-ins," but the cited transcript page does not support that assertion. *See* Pls.' Ex. 51, Additional Excerpts of Mitchell Dep., at 88:15-24.

[5] Defendants argue that the Mathis Declaration is inadmissible because an "out of court statement of deceased declarant is hearsay." SUMF Resp. ¶¶ 153-54. But the Declaration is admissible under Federal Rule of Evidence 807, which allows hearsay (1) supported by "sufficient guarantees of trustworthiness" (2) that is "more probative on the point for which it is offered" than any other reasonably obtainable evidence. Fed. R. Evid. 807(a). The Mathis Declaration satisfies both requirements. It was sworn under penalty of perjury. *Ali v. Rubio*, No. 1:22-cv-02786, 2025 WL 901287, at *3 (D.D.C. Jan. 24, 2025) (admitting deceased declarant's sworn statements under Rule 807 because "willfully lying . . . would have exposed [the declarant] to criminal prosecution"), *appeal docketed* (Mar. 25, 2025). It is also corroborated by Defendants' supervision records and Davis's declaration, which Defendants do not challenge. *Disabled in Action v. City of New York*, 437 F. Supp. 3d 298, 308 n.11 (S.D.N.Y. 2020) (admitting deceased declarants' declarations in ADA class action where corroborated by other class members' declarations). And because Mathis is deceased, his Declaration is the most probative evidence available of his experience. Defendants have had notice of and full opportunity to challenge the Declaration since it was filed in May 2024. *See* Pls.' Ex. 40; *Ali*, 2025 WL 901287, at *4 (notice satisfied where opposing party "was able to (and did) challenge [statement] in his brief"). There is no basis to exclude it now.

discretionary exceptions. But an agency does not satisfy its legal obligation by making informal, isolated exceptions that are not consistently provided and cannot be counted on.

Consider Davis's experience. He explained that his "CSO changes often," and with each change, expectations are different. Pls.' Ex. 11 (K. Davis. Decl.) ¶ 26; SUMF Resp. ¶ 264. Only "one" of his "5 to 7" CSOs provided anything close to an accommodation by coming "to meet [Davis] where [he] was instead of making [Davis] go to her all of the time." Pls.' Ex. 11 ¶ 26. Because each CSO is left to decide whether and when to make such changes, Davis could not count on this as an accommodation, and when he received a new CSO, that CSO insisted on different parameters. *Id*.

Such an inconsistent approach cannot be "a reasonable accommodation" because it is not "effective" at the goal of helping the supervisee succeed on supervision. *Cogdell v. Murphy*, No. CV 19-2462, 2020 WL 6822683, at *6 (D.D.C. Nov. 20, 2020). That is why other courts have held that it is not sufficient, for example, for a county to rely on "first responders to make individual judgments" as to how to best accommodate individuals with disabilities during an evacuation when those first responders have not "receive[d] training" on how to do so and therefore cannot be relied on to consistently provide legally adequate accommodations to all. *Cal. Found. For Indep. Living Ctrs. v. County of Sacramento*, 142 F. Supp. 3d 1035, 1063 (E.D. Cal. 2015); *see* Pls.' Br. 32-34; *cf. Lejuez v. Turner*, No. 17-CV-1767, 2020 WL 6270747, at *4 n.3 (D.D.C. Oct. 23, 2020) ("'*de facto* grant[]' [of] Plaintiff's request for accommodation" "cannot make up for a failure to formally grant reasonable accommodation under the Rehabilitation Act"). Here, Defendants admit that while "CSOSA uses written policies and procedures 'to ensure consistency and accountability'" on other issues, SUMF Resp. ¶ 185, CSOSA has no written policies and procedures regarding accommodations, *see supra* Section I.C.1.c. Defendants thus cannot consistently and reliably

provide accommodations. *See* Mitchell Rep. at 16 (ad hoc systems cannot "function at scale").

*Third*, Defendants argue (at 14) that some supervisees were referred to various mental health treatments and other services. Although treatment can be beneficial for many people, it is not, in and of itself, an accommodation and it does not immediately remove barriers to compliance with supervision conditions. Moreover, mandated treatment may not be accessible given a supervisee's disability-related needs, including reading comprehension level, trauma history, and mobility limitations. *Id.* at 7-8. Further, many supervisees need accommodations to access treatment, such as support navigating the intake process or finding a provider that meets their disability-related needs; yet the record shows [redacted] When mandated as a supervision condition, treatment programs can become a source for additional punishment (e.g., revocation and incarceration), especially when the treatment is not accessible. *See* Defs.' Br. 15-16; Vela Dep. 153:9-17 (Commission admitting that "noncompliance" with "mental health aftercare" condition could lead a supervisee to "face revocation" and be "incarcerated"); SUMF Resp. ¶¶ 18, 21, 98; Pls.' Ex. 25 (Edmondson Decl.) ¶¶ 19-20.

*Fourth*, Defendants contend (at 14) that "Plaintiffs' expert testified that she observed instances" where CSOs "texted supervisees reminders to comply with their conditions of release, such as to remember to charge their GPS monitor." But this testimony refers to a single supervisee's record (Supervisee 7), whom Defendants failed to accommodate in other ways. *See* Ex. 51 (Additional Excerpts of Mitchell Dep.) at 79:1-3 (identifying supervisee); *id.* at 86:20-90:1 (discussion of GPS); SUMF ¶¶ 91-99 (discussing failures to accommodate Supervisee 7). In any event, while such reminders could constitute an accommodation if provided consistently and if effective as an accommodation for the particular supervisee, Defendants have not put forth such

evidence. *See* Mitchell Dep. 88:25-90:1 (absent such evidence, it is "difficult for [Plaintiffs' expert] to determine" if this is an accommodation).

*Finally*, Defendants argue (at 14) that reinstating a supervisee to supervision following arrest, detention, and revocation proceedings is an accommodation. But incarcerating people whose disability-related barriers impacted their ability to comply with their supervision conditions and then reinstating them to those very same conditions is not an accommodation. As Defendants admit, supervisees are always incarcerated pending revocation proceedings, which can take up to 65 days to convene. SUMF Resp. ¶¶ 20, 24. That incarceration can cause significant harms, as Defendants' *own* (and only) example—William Mathis—highlights.[6] Defs.' Br. 14-15. While Defendants "ultimately released and reinstated Mr. Mathis to supervision," *id.*, that was only after he missed a medical appointment to get a defibrillator to treat his congestive heart failure while incarcerated. *See* Pls.' Ex. 40 (Mathis Decl.) ¶¶ 33-35. And Defendants regularly reinstate supervisees, including Mathis, to supervision under the same conditions they could not follow due to their disability-related barriers, setting them up for failure again. *See, e.g.*, SUMF Resp. ¶¶ 75-76, 119, 169; Mathis Decl. ¶¶ 31, 37; *see also* Declaration of Bernard M. Desrosiers ¶¶ 11-12, *Hagans v. U.S. Parole Comm'n*, No. 25-cv-1671 (D.D.C. June 30, 2025), ECF No. 14-2 (showing reinstatements are common). Incarceration and release on the same conditions that a supervisee previously struggled to comply with due to their disabilities is not an accommodation; on the contrary, it puts them right back in the same un-accommodated position they started in.

### 3. Defendants Must Affirmatively Accommodate Supervisees Even Without Requests For Specific Accommodations

Finally, Defendants assert (at 12) that class members must make a "specific request for

---

[6] Defendants cite (at 14) their "Ex. 18 (reinstating Mathis)," but that record is an AVR for Supervisee 7.

accommodation" to trigger Defendants' duties under the Rehabilitation Act. That is wrong. Government programs, at a minimum, must accommodate known or "obviously disabled" individuals, even if those individuals "do[] not ask for accommodations." *Pierce*, 128 F. Supp. 3d at 269-70. It is "inconsistent with the text and purpose of the Rehabilitation Act" to require, for example, "an inmate who cannot walk" to make "a specific request for a wheelchair [to] trigger any duty to accommodate," or to require "inmates with known communications-related difficulties" "to communicate a need for accommodations." *Id.* For known or obvious disabilities, the defendant has an "affirmative duty" to accommodate—with or without a request. *Id.* at 268-72; *see also Chenari v. George Washington Univ.*, 847 F.3d 740, 748 (D.C. Cir. 2017) (recognizing "cases where the plaintiff's need for an accommodation is so apparent that defendant must offer one regardless of whether plaintiff requested it"); *Bax v. Drs. Med. Ctr. of Modesto, Inc.*, 52 F.4th 858, 869 (9th Cir. 2022) ("It is axiomatic that an 'entity's duty to look into and provide a reasonable accommodation may be triggered when the need for accommodation is obvious,' even if no request has been made."); *Chisolm v. McManimon*, 275 F.3d 315, 330 (3d Cir. 2001); *Robertson*, 500 F.3d at 1197-98.

This is consistent with the fact that the Rehabilitation Act imposes an obligation to assess accommodation needs. Defendants must "gather sufficient information from the [individual with a disability] and qualified experts as needed to determine what accommodations are necessary." *Sacchetti v. Gallaudet Univ.*, 344 F. Supp. 3d 233, 272 (D.D.C. 2018) (ADA claim) (quoting *Updike v. Multnomah County*, 870 F.3d 939, 954 (9th Cir. 2017)); *see also, e.g.*, *Armstrong v. Davis*, 275 F.3d 849, 859, 876 (9th Cir. 2001) (upholding class-wide injunction requiring state parole board "to identify . . . which prisoners have a disability, create and maintain a system for tracking disabled prisoners and parolees, and provide them with accommodations at parole and

parole revocation proceedings"). "[N]othing in the disability discrimination statutes even remotely suggests that covered entities have the option of being passive." *Pierce*, 128 F. Supp. 3d at 269.

Here, there is no dispute that Defendants knew about Davis's and other supervisees' disabilities, many of which are also obvious. Defendants assert (at 13-14) that Davis did not mention his disabilities (and thus request accommodations) at his 2023 revocation hearing,[7] but both CSOSA and the Commission *knew* about his disabilities well before that hearing: "[t]he Commission was [concededly] aware that Mr. Davis needed treatment for his burns no later than April 2022"; CSOSA's own records are replete with references to Davis's mental health disabilities and mobility limitations; and Davis's mental health provider even testified at his 2023 hearing. SUMF Resp. ¶¶ 129-30. For other supervisees, Defendants themselves identified these individuals as having disabilities. *See supra* Section I.A. Regardless, even if an accommodation request were required, there is undisputed evidence of several supervisees doing exactly that. *See, e.g.*, Pls.' Ex. 40 ¶ 12 (Mathis requested CSO "account for" "appointments at the VA hospital"); Defs.' SUMF ¶ 93 (Mathis's counsel requested reconsideration based on medical condition); [redacted]; *see also Murphy v. District of Columbia*, 590 F. Supp. 3d 175, 184 (D.D.C. 2022) ("[A]ccommodation requests do 'not have to be in writing . . . or formally invoke the magic words "reasonable accommodation."'").

Ultimately, it is impracticable to insist that every supervisee request accommodations because—despite knowing that many supervisees have disabilities—Defendants lack any clear

[7] Defendants cite "summary and audio recording of Davis's revocation hearing," but Defendants never produced any audio recording and cannot rely on it now. *See* LCvR 26.2(a) ("A party that without substantial justification fails to disclose information . . . or to amend a prior response to discovery . . . , is not, unless such failure is harmless, permitted to use as evidence . . . on a motion any . . . information not so disclosed."); Fed. R. Civ. P. 37(c)(1).

process to request accommodations. *See, e.g.*, SUMF Resp. ¶¶ 42, 131-32, 202, 204-05, 212, 225-26, 228, 241-45, 267. Defendants admittedly do not even notify supervisees of their right to accommodations. *Id.* ¶ 222. Absent notice, supervisees "may be unaware that they are entitled to accommodations or of how to request them." Mitchell Rep. at 18. This is especially so when supervisees know their CSOs are aware of their disabilities yet have made no changes to accommodate them. Indeed, Defendants do not even provide CSOs with the training necessary to recognize disabilities and requests for accommodations, much less training on how to respond to them. *See* SUMF Resp. ¶¶ 241-43, 254, 256, 266.

* * *

For all those reasons, Plaintiffs are entitled to summary judgment on this element, and at a minimum, Defendants are not entitled to judgment given all of the evidence in Plaintiffs' favor.

### D. Defendants' Undue Burden Argument Does Not Prevent Summary Judgment On Liability Or Entitle Defendants To Summary Judgment

Defendants' undue burden argument does not defeat Plaintiffs' entitlement to partial summary judgment—nor does it entitle Defendants to summary judgment in their favor.

As an initial matter, Defendants are wrong in stating (at 18) that partial summary judgment should be denied because Plaintiffs did not move on *Defendants'* undue burden defense. "Undue burden" is an affirmative defense for which Defendants bear the burden of proof. *Pierce*, 128 F. Supp. 3d at 277; *see Barth v. Gelb*, 2 F.3d 1180, 1182 (D.C. Cir. 1993). Accordingly, it is Defendants' responsibility to raise and press that defense, including at summary judgment. *E.g.*, *Occidental Petroleum Corp. v. Wells Fargo Bank, N.A.*, 117 F.4th 628, 643 (5th Cir. 2024) ("[T]he plaintiff is not obligated to negate each element of an affirmative defense to succeed at the summary judgment stage.").

Defendants are also wrong that this defense entitles them to summary judgment. To succeed on this defense, Defendants must prove that *each* of Plaintiffs' proposed accommodations would be unduly burdensome, not just some of them. *Am. Council of the Blind*, 525 F.3d at 1271 (affirming summary judgment for plaintiffs on liability). As the D.C. Circuit has explained, "liability under section 504 requires only that the least burdensome accommodation not be unduly burdensome." *Id.* Because Defendants have "discretion to choose from a range of accommodations," they can defeat summary judgment on liability only by showing that "all accommodations . . . would pose an undue burden." *Id.* Defendants make no attempt to do so. Defendants present no evidence that raises a dispute of material fact as to whether each and every accommodation is an undue burden. Instead, Defendants construct a strawman focused on one accommodation Plaintiffs have never requested: "eliminat[ing] in-person check-ins altogether for supervisees whose disabilities make in-person check-ins more difficult." Defs.' Br. 19. But offering one example of a supposedly burdensome accommodation is not enough to defeat summary judgment for Plaintiffs—and certainly is not enough to entitle *Defendants* to summary judgment. In any event, Defendants admit that CSOs can offer alternatives to in-office check-ins, such as "virtual appointments" and "home visits." ECF No. 74-3 (Forsha Decl.) ¶ 5.

To the extent that Defendants' true argument is that identifying people with disabilities and providing reasonable accommodations on a class-wide basis would be unduly burdensome, this argument is not credible given Defendants' own stated plans to change their procedures. Defendants assert that "the programmatic changes that Plaintiffs propose would . . . fundamentally alter the nature of supervision," Defs.' Br. 19, but mere pages later, contend that CSOSA and the Commission are planning to implement "*sweeping* measures to improve their identification and treatment of individuals with disabilities," *id.* at 27-28 (emphasis added) (citing Forsha Decl.

¶¶ 5-6). Defendants cannot have it both ways: They cannot claim that procedures needed to provide accommodations are unduly burdensome *and* that they are already planning to implement some such procedures. Further, Defendants offer no evidence that complying with the Rehabilitation Act by systematically assessing accommodation needs and providing needed accommodations would fundamentally alter the nature of supervision—nor could they.

Finally, in an attempted bank shot, Defendants argue that "there is no remedy available" because they cannot be forced to take "affirmative action" to accommodate individuals with disabilities. Defs.' Br. 25-27 (quoting *Se. Cmty. Coll. v. Davis*, 442 U.S. 397, 411 (1979), and *Shirey v. Devine*, 670 F.2d 1188, 1201 (D.C. Cir. 1982)); *see also id.* at 12 (quoting *Am. Pub. Transit Ass'n v. Lewis*, 655 F.2d 1272, 1277-78 (D.C. Cir. 1981)). Though cloaked in justiciability language, this argument merely reframes Defendants' undue burden defense: Defendants contend (at 19) that the changes sought here would impermissibly require them to institute "fundamental alteration[s] in the nature of [their] program" and would therefore be unduly burdensome. *Davis*, 442 U.S. at 409-12; *see also Am. Council of the Blind*, 525 F.3d at 1266 & n.12 (citing *Davis* as example of undue burden defense). But Defendants present no evidence raising a dispute of material fact as to whether each of the possible accommodations here would impose an undue burden by fundamentally altering Defendants' programs, and a review of their cases confirms that Defendants are not entitled to summary judgment.

*Davis* does not stand for the proposition that affirmative acts are *never* required to accommodate people; rather, it held that a *specific requested accommodation* was unreasonable. There, the Supreme Court held that a nursing program did not need to "substantial[ly] modif[y]" its training program to accommodate a deaf student who the Court determined could not safely participate in clinical training due to her reliance on lip-reading. 442 U.S. at 413. The Court agreed

with the nursing program that because doctors and nurses often need to wear masks and because they might need to get the student's attention when she was looking elsewhere, the student could not participate in clinical training as designed. *Id.* at 403-07. The Court held that the modifications the student requested—supervision whenever she interacted with patients and permission to skip "certain required courses"—were too significant to be reasonable. *Id.* at 407-10.

*Davis* stands in stark contrast to the facts of this case. Plaintiffs have not requested any particular accommodations but rather an order compelling Defendants to reliably and consistently provide accommodations that are reasonable. But even the changes that Plaintiffs offer as examples of potential reasonable accommodations (e.g., explaining supervision requirements in plain language or offering flexible meeting scheduling, *see* Mitchell Rep. at 14-15) could hardly be described as "fundamental alteration[s]," 442 U.S. at 410. Indeed, Defendants claim that they are planning to implement some of these accommodations on an ad hoc basis—underscoring that they are not unduly burdensome. Defs.' Br. 27-28 (citing Forsha Decl. ¶¶ 5-6).

*Shirey* further proves the point. There, the D.C. Circuit held that the Government was liable for denying tenure protection to a deaf employee that it provided to other employees. 670 F.2d at 1204. In so holding, the court distinguished *Davis*, explaining that "the 'adjustments' sought by the deaf plaintiff in *Davis* were of a completely different magnitude." *Id.* at 1201 n.36. Because the accommodations sought by the plaintiff in *Shirey* "would have cost [the Government] little, if anything," there was no undue burden. *Id.* The same is true here. *See* Mitchell Rep. at 14-15.

Finally, Defendants cite *American Public Transit Association v. Lewis*, 655 F.2d 1272 (D.C. Cir. 1981), for the proposition that Section 504 of the Rehabilitation Act "does not impose affirmative action to accommodate the handicapped." Defs.' Br. 12 (citing 655 F.2d at 1277-78). But *Lewis* did not and could not hold that government programs have no obligation to

accommodate individuals with disabilities. Rather, *Lewis* held that the Rehabilitation Act did not require transit systems to make "extraordinarily expensive" accessibility changes within a short time period because doing so would "impose extremely heavy financial burdens." *Id.* at 1275-76.

As the D.C. Circuit has recognized in other cases, government programs must provide reasonable accommodations when they do not impose the sort of fundamental alterations and extraordinary costs that would constitute an undue burden. For example, the D.C. Circuit held that, "[a]lthough any change to the design of U.S. currency would undoubtedly require a substantial investment of labor, time, and money," such an investment would not be unduly burdensome because it "would constitute a small fraction of the Bureau [of Engraving and Printing]'s annual expenditures" *Am. Council of the Blind*, 525 F.3d at 1272 (internal quotations, citations, and alterations omitted). The remedies Plaintiffs seek here are considerably more modest than the redesign of all U.S. currency. *See* Mitchell Rep. at 14-15. As such, Defendants cannot carry their summary judgment burden on this affirmative defense, and Plaintiffs remain entitled to summary judgment on Defendants' liability.

## II. THE COURT SHOULD CONSIDER PLAINTIFFS' EXPERT BUT NOT DEFENDANTS' BELATED AND INCONSISTENT DECLARATIONS

The Court should consider Plaintiffs' expert testimony but ignore Defendants' new declarations, which are inconsistent with prior sworn statements, address events that happened after the close of discovery, and largely concern proposed *future* policies not currently in effect.

### A. The Court Should Consider Plaintiffs' Expert Testimony

The Court should reject Defendants' contention that the testimony of Plaintiffs' expert, Kelly Mitchell, should be excluded under Federal Rule of Evidence 702 or given little weight. Mitchell is qualified as an expert, had a sufficient basis for her opinions, and did not testify as to

any ultimate legal conclusions. Finally, even if Mitchell's testimony were somehow excluded, that would not entitle Defendants to summary judgment on liability.

***Qualifications.*** Rule 702 requires only that witnesses possess "knowledge, skill, experience, training, or education" such that their opinions will "help" the trier of fact. Fed. R. Evid. 702; *see also Khairkhwa v. Obama*, 793 F. Supp. 2d 1, 10-11 (D.D.C. 2011), *aff'd*, 703 F.3d 547 (D.C. Cir. 2012). This standard "favor[s]" the admissibility of expert testimony. *Khairkhwa*, 793 F. Supp. 2d at 10 (citing *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 587 (1993)). Indeed, "the rejection of expert testimony is the exception rather than the rule." Fed. R. Evid. 702 Advisory Comm. Note to 2000 Amendment. The adversarial process, including "[v]igorous cross-examination" and "presentation of contrary evidence," remains the "traditional and appropriate" mechanism for testing experts' opinions. *Id.* (quoting *Daubert*, 509 U.S. at 596). Defendants' objections to Mitchell's qualifications are wrong, but at best, they go to the weight of her testimony, not its admissibility. This Court should thus accept Mitchell as a qualified expert.

Mitchell's decades of experience administering prison, parole, and probation systems consistent with disability law qualifies her to opine on the systematic provision of reasonable accommodations to people with disabilities on supervision. *See* Fed. R. Evid. 702(a). Contrary to Defendants' suggestion otherwise (at 22), "[t]here is . . . no requirement that an expert possess formal education, and an expert may be qualified on the basis of his or her practical experience." *Khairkhwa*, 793 F. Supp. 2d at 11. Mitchell's practical experience plainly qualifies her. *See* Mitchell Rep. at 4; *see also* Attach. 1 to Mitchell Rep. At the California Department of Corrections and Rehabilitation, Mitchell had direct responsibility for ensuring that the California prison and parole system complied with state and federal disability law, including by (i) "develop[ing] and implement[ing] training" on federal disability law, (ii) "develop[ing] policies and procedures for

the identification of people with disabilities and proactive assessment of their accommodation needs," (iii) "establish[ing] a system for individuals to request accommodations and for staff to provide reasonable accommodations," (iv) "ensur[ing] equal access to programs and services," (v) "creat[ing] tracking systems for appeals and grievances," and (vi) "monitor[ing] compliance with all legal mandates." Mitchell Rep. at 4. At the Alameda County Probation Department, Mitchell administered probation for thousands of supervisees, many with disabilities. *Id.* She has also collaborated with federal partners on release and reentry program development, among other initiatives. *Id.* Further, Mitchell is now a consultant specializing in correctional policies and practices and disability law compliance. *Id.*

Defendants' objections to Mitchell's qualifications are misplaced and belied by the record. First, without citation to any relevant legal authority, Defendants complain (at 22) that Mitchell gained most of her experience in California, rather than the District of Columbia. But Defendants fail to explain why Mitchell's experience administering post-conviction supervision programs in compliance with federal disability law is irrelevant simply because it occurred in a different jurisdiction that is likewise subject to the same federal law. *Cf. Khairkhwa*, 793 F. Supp. 2d at 13-14 (permitting expert on Taliban and Afghanistan to testify regarding Taliban-Iranian relations). Moreover, Mitchell testified that she had considerable experience working with cross-jurisdictional groups that included representatives from the D.C. corrections and supervision systems, and that she has provided training sessions to delegates from the Federal Bureau of Prisons. Pls.' Ex. 51, Mitchell Dep. 25:6-26:23, 27:8-16.

Next, Defendants attempt to minimize Mitchell's experience working with people on supervision. Defs.' Br. 22 (citing Pls.' Ex. 51, Mitchell Dep. 17:23-24). But Defendants merely point to Mitchell's statement that she did not have "any direct" "responsibility" over people on

supervision while serving as a correctional business manager *for three years early in her career*. Pls.' Ex. 51, Mitchell Dep. 17:5-23. Later in her career, Mitchell testified that she had exactly the experience Defendants claim she needs: "specific responsibility for preparing [offenders] for parole or re-integration and . . . release," including "rehabilitative programming, case management, [and] dealing with handoffs to . . . other agencies," including federal prison and supervision systems. Pls.' Ex. 51, Mitchell Dep. 18:21-19:19.

***Basis for Opinions.*** Although an expert's testimony must be "based on sufficient facts or data," Fed. R. Evid. 702(b), "[f]ailing to review all relevant evidence is not a ground for excluding [an expert]'s testimony; rather, it provides subject matter for cross-examination," *SEC v. Johnson*, 525 F. Supp. 2d 70, 75-76 (D.D.C. 2007). Defendants' criticisms (at 23) of the materials Mitchell reviewed "go to the weight of [her] testimony rather than the admissibility." *Id.* at 76 (citation omitted). But even as to weight, Defendants' objections fail.

To start, Defendants blatantly misstate the materials Mitchell reviewed. Defendants contend (at 23) that those materials "consist entirely of legal documents created in anticipation of litigation," but Mitchell reviewed numerous materials not prepared for litigation, including Defendants' own manuals and individual supervisees' case records. Mitchell Rep. at 5-7. Defendants also wrongly state that Plaintiffs failed to discuss some supervisees reviewed by Mitchell in their opening brief. *Compare* Mitchell Rep. at 5-7, *with* Pls.' Br. 15-18.

Defendants also inconceivably fault Mitchell for not addressing assertions that Defendants' 30(b)(6) witnesses, Kaitlin Forsha and Oscar Vela, made in their post-discovery, summary-judgment declarations. But subsequent factual developments have no bearing on the admissibility or weight of Mitchell's opinions, given that she could only "articulate [her] opinion based upon facts or data made known to h[er] prior to" the preparation of her report. *See Houlahan v. World*

*Wide Ass'n of Specialty Programs & Schs.*, No. 04-01161, 2007 WL 4730934, at *4 (D.D.C. May 30, 2007).

Moreover, many assertions in Forsha's and Vela's post-discovery declarations are directly inconsistent with Defendants' own assertions at the time of Mitchell's report and deposition. For instance, Defendants claim (at 24) that Mitchell's conclusions are "belied" by Forsha's declaration that "CSOSA does have policies and procedures for assessing disabilities and making reasonable accommodations." But throughout discovery, CSOSA admitted it had no formal policies regarding accommodations. *E.g.*, Pls.' Ex. 42 (Defs.' May 12 Resp. to Interrogs.) at 9; *see also* Pls.' Ex. 1 (Ans.) ¶¶ 43, 149; Pls.' Ex. 3 (Forsha Dep.) at 166:20-167:2, 169:7-10, 180:5-9; 192:1-5, 211:15-212:7; Pls.' Ex. 53, Additional Excerpts of CSOSA Dep., at 199:15-20. Indeed, during Mitchell's deposition, *defense counsel* represented that "Defendants have admitted and conceded that they had no formal policies or practices regarding provision of accommodations [f]or individuals on supervision"; that both agencies "do not have systems to assess accommodation needs"; and that both agencies "have admitted they do not regularly track individuals with disabilities, nor do they have any sort of regular reporting on accommodations." SUMF Reply ¶ 251 (citing Mitchell Dep. 63:19-25); Pls.' Exs. 17, 51, Mitchell Dep. 62:20-63:2, 64:12-21; *see also infra* Section II.B (discussing other inconsistencies in the post-discovery Forsha and Vela declarations).

Finally, Defendants take issue with Mitchell not analyzing officer caseload data given her agreement that caseloads could play a role in the feasibility of a given accommodation. Defs.' Br. 23 (citing Pls.' Ex. 51, Mitchell Dep. 60:9-11). But Mitchell did not analyze caseload data because neither her opinions nor this case concern the reasonableness of any particular accommodation. *See* Mitchell Rep. at 4-5. Rather, they concern Defendants' failure to provide accommodations class-wide.

***Legal Conclusions.*** Defendants next incorrectly contort (at 23-24) Mitchell's opinions to suggest she offered legal conclusions regarding Defendants' "obligations under the Rehabilitation Act." But Mitchell never suggested that any or all of the key features of effective accommodation systems described in her report are *specifically required* to comply with the Rehabilitation Act. *See* Mitchell Rep. at 14-23. Rather, these features typify systems that consistently and reliably provide accommodations. *See id.* Absent such features, Mitchell concluded that Defendants "lack the foundational infrastructure necessary to provide reasonable accommodations in a systematic and consistent manner." *Id.* at 24. That is a factual assertion that, if adopted by the Court, "would support a conclusion that the legal standard at issue was satisfied," but it is not a statement "as to whether the legal standard has been satisfied." *Burkhart v. WMATA*, 112 F.3d 1207, 1212-13 (D.C. Cir. 1997).

***Effect of Exclusion.*** Finally, even if Mitchell were excluded, Defendants still would not be entitled to summary judgment. Summary judgment follows exclusion of an expert only where expert testimony is necessary to prove an essential element of a claim—the standard of care for professional negligence, for example. *See, e.g.*, *Burke v. Air Serv Int'l, Inc.*, 685 F.3d 1102, 1105-06 (D.C. Cir. 2012). As Defendants' own cases make clear, federal disability law carries no such requirement. *See Sacchetti v. Gallaudet Univ.*, 344 F. Supp. 3d 233, 250-51, 278 (D.D.C. 2018) (denying summary judgment to defendant on ADA claim despite no expert evidence); *see also supra* Section I.A (collecting cases stating no expert medical testimony required).

### B. This Court Should Not Consider Defense Witnesses' Later-In-Time, Inconsistent Declarations

The Court should not consider the post-discovery Forsha Declaration, ECF No. 74-3, and Vela Declaration, ECF No. 74-4, insofar as they are inconsistent with Forsha's and Vela's prior depositions and discuss potential, not-yet-implemented reforms.

***Inconsistent Statements.*** "[A] party cannot create a genuine issue of fact sufficient to survive summary judgment simply by contradicting his or her own previous sworn statement (by, say, filing a later affidavit that flatly contradicts that party's earlier sworn deposition) without explaining the contradiction or attempting to resolve the disparity." *Cleveland v. Pol'y Mgmt. Sys. Corp.*, 526 U.S. 795, 806 (1999); *see Galvin v. Eli Lilly & Co.*, 488 F.3d 1026, 1030 (D.C. Cir. 2007) (similar); *Nelson v. City of Davis*, 571 F.3d 924, 928 (9th Cir. 2009) ("[A] party ought not be allowed to manufacture a bogus dispute with himself to defeat summary judgment." (emphasis omitted)). The Court should disregard the subsequent inconsistent statements in the Forsha and Vela Declarations.

Defendants cite the Forsha Declaration for the proposition that "CSOSA does have policies and procedures for assessing disabilities and making reasonable accommodations." Defs.' Br. 24 (citing Forsha Decl. ¶ 5). But that proposition is inconsistent with Forsha's prior testimony that "there is no guidance" on "evaluating whether people need reasonable accommodations" or "providing people with reasonable accommodations." Forsha Dep. at 81:13-82:12.

Defendants cite the Vela Declaration for the proposition that, starting on March 20, 2025, the Commission "implemented trainings to educate hearing examiners on identification of and reasonably accommodating [] disabilities under the Rehabilitation Act." Defs.' Br. 25 (citing Vela Decl. ¶ 28). But that directly contradicts Vela's prior 30(b)(6) deposition testimony from December 2025 that the Commission does not provide training on "how to assess if a person has disabilities," "how to determine what disability accommodations are appropriate," and "how to provide disability accommodations." Pls.' Ex. 4 (Vela Dep.) at 100:19-103:7.

***Pending Policies Not In Effect.*** Forsha's Declaration also repeatedly refers to *pending*

policies not yet in effect.[8] Those hypothetical, future policies have no bearing on summary judgment because they are not evidence that Defendants currently accommodate individuals with disabilities on supervision. *See Anglers Conservation Network v. Pritzker*, 139 F. Supp. 3d 102, 111-12 (D.D.C. 2015) ("[I]t is well established that promises of future compliance with the law cannot satisfy the Government's current legal obligation."); *Samuels v. District of Columbia*, 669 F. Supp. 1133, 1144-45 (D.D.C. 1987) ("'[P]romises of reform' offer no basis for withholding injunctive relief."); *see also Galvin*, 488 F.3d at 1030 ("[A] deposition is the time for the plaintiff to make a record capable of surviving summary judgment—not a later filed affidavit."); *Lewis v. U.S. Parole Comm'n*, __ F.R.D. __, No. 1:22-cv-2182, 2026 WL 875277, at *17-18 (D.D.C. Mar. 31, 2026) (later-in-time declarations regarding reform efforts "come too little and too late to overcome the wealth of evidence presented by Plaintiffs"). To the extent these policies are relevant at all, they only bear on the prudential mootness issue Defendants raise. *See infra* Section III.B.

## III. DEFENDANTS' REMEDY ARGUMENTS FAIL

### A. Defendants Are Not Entitled To Summary Judgment On Remedy

Defendants are incorrect to argue (at 25) that "Plaintiffs' claim is not justiciable because there is no remedy available." As an initial matter, Plaintiffs did not move for summary judgment on remedy. And for this Court to grant summary judgment to Defendants, Defendants would need to present evidence that, viewed in the light most favorable to Plaintiffs, shows that there is no material dispute of fact that there is *no remedy at all* this Court can grant. Defendants fail to do so, because this Court can grant both injunctive and declaratory relief.

[8] Defendants did not submit copies of the proposed polices or forms either to Plaintiffs or the Court.

Defendants concede—as they must in light of this Court's prior ruling—that federal "[c]ourts possess inherent equitable power to enjoin the Government from violating the Rehabilitation Act." ECF No. 31 at 22; *see also Lane v. Pena*, 867 F. Supp. 1050, 1073 (D.D.C. 1994) ("It is well-established that injunctive and declaratory relief are available under the Rehabilitation Act."). While Defendants confusingly suggest (at 26) that "the power to 'enjoin' is distinct from the power to order an agency to adopt a judicially-constructed program," they ignore that injunctions can be prescriptive, and that this Court has already issued prescriptive injunctive relief. *See* ECF No. 32 (ordering Defendants to "assess what reasonable accommodations named Plaintiffs . . . require to have an equal opportunity to succeed on supervision . . . and provide any and all such required accommodations").

There is no barrier to awarding similar relief on a class-wide basis. Indeed, courts regularly fashion class-wide relief to remedy Rehabilitation Act violations. For example, the Ninth Circuit upheld a "system-wide injunction requiring the [California State Parole] Board to modify its policies and practices to comply with [the ADA, the Rehabilitation Act,] and constitutional standards," by identifying "which prisoners have a disability, creat[ing] and maintain[ing] a system for tracking disabled prisoners and parolees, and provid[ing] them with accommodations at parole and parole revocation proceedings." *Armstrong*, 275 F.3d at 854, 859. The district court in *Armstrong* had "permitted the state to develop the policies and programs necessary to remedy its violation of the ADA and Rehabilitation Act, and afforded the plaintiffs an opportunity to object to the state's proposals," and the parties ultimately "stipulated to the . . . new policies and procedures." *Id.* at 872. This Court could follow a similar process and order Defendants to implement changes, including but not limited to updating their intake processes to assess accommodation needs, establishing mechanisms to record and communicate accommodations,

notifying supervisees of their rights under the Rehabilitation Act, and providing employees training on Rehabilitation Act requirements. *See, e.g.*, *Brown v. District of Columbia*, 795 F. Supp. 3d 103, 109-10 (D.D.C. 2025) ("order[ing] [class-wide] declaratory and injunctive relief," in ADA and Rehabilitation Act case, including requiring defendant to "develop and implement a working system of transition assistance for plaintiffs"). That this case arises under an equitable cause of action rather than a statutory one does not limit the Court's ability to provide remedies that are robust and prescriptive. *See, e.g.*, *Wright v. Council of City of Emporia*, 407 U.S. 451, 453 (1972) (desegregation order under equitable cause of action); *Griffin v. Cnty. Sch. Bd. of Prince Edward Cnty.*, 377 U.S. 218, 231-34 (1964) (same). Finally, even if there were no available injunctive relief, Defendants still would not be entitled to summary judgment because Plaintiffs would at least be entitled to declaratory relief. *See* ECF No. 1 at 33.

Separately, Defendants argue (at 2, 26) that this Court cannot provide relief because any remedy that requires "systemic, agency-wide action" is "committed to agency discretion under the APA." The APA's exception to judicial review is "very narrow" and applies only "in those rare instances where 'statutes are drawn in such broad terms that in a given case there is no law to apply.'" *Heckler v. Chaney*, 470 U.S. 821, 830 (1985) (citation omitted). Defendants do not explain how this case, which does not arise under the APA, could possibly fall into that narrow exception.[9]

[9] *Bannister v. U.S. Parole Commission*, No. 18-CV-01397, 2020 WL 85229 (D.D.C. Jan. 7, 2020), is distinguishable. There, the plaintiff filed suit under the APA to "compel agency action unlawfully withheld or unreasonably delayed." *Id.* at *1. The Court dismissed the suit because that provision of the APA only allows a court to compel "discrete agency action that [the agency] is required to take," and no statute required the agency to promulgate the specific regulations the plaintiff sought. *Id.* at *1-3 (emphasis omitted). The Court expressly distinguished *Pierce* as involving a "straightforward discrimination claim brought directly under the [ADA] and the Rehabilitation Act." *Id.* at *3. This case, like *Pierce*, seeks to enforce the Rehabilitation Act directly, not via the APA.

Defendants' related argument (at 20) that "[t]his court cannot order the Defendants to undertake rulemaking under the APA" is a red herring. Defendants can modify their policies without rulemaking. *See* 5 U.S.C. § 553(b)(A) ("general statements of policy" are exempt from rulemaking); *Nat'l Mining Ass'n v. McCarthy*, 758 F.3d 243, 252 (D.C. Cir. 2014) ("An agency action that merely explains how the agency will enforce a statute or regulation . . . is a general statement of policy."). If Defendants wish to undertake rulemaking to comply with any order of this Court, they are certainly free to do so, but nothing would require them to do so.

Finally, Defendants argue (at 26-27) that this Court cannot enter "general orders compelling compliance" with the Rehabilitation Act. *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 66-67 (2004). But Plaintiffs' complaint requests specific injunctive and declaratory relief requiring Defendants to assess accommodation needs and provide accommodations, not a generic follow-the-law decree. This Court can plainly order such relief following remedy proceedings and already has in its preliminary injunction order. *See, e.g.*, *Brown*, 795 F. Supp. 3d at 109-10.

Ultimately, Defendants seek to make the Rehabilitation Act toothless. They argue, on the one hand, that this Court cannot enter "general orders compelling compliance" with the Rehabilitation Act and, on the other, that it cannot enter any specific relief because that would require "the Agencies to take systemic, agency-wide action." Defs.' Br. at 26-27. In their view, federal agencies apparently do not have to follow the Rehabilitation Act at all, because no court can provide *any* injunctive relief (whether general or specific). That is plainly not the law.

**B. This Case Is Not Prudentially Moot**

As the party claiming mootness, Defendants have the burden to demonstrate mootness, *see Cardinal Chem. Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 98 (1993), and they do not come close to meeting it. Defendants do not claim that this case is *constitutionally* moot in the sense of lacking

an Article III case-or-controversy, because it plainly is not. "[A] case becomes 'moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party.'" *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (citation omitted). This Court can clearly order relief. *See supra* Section III.A. So instead, Defendants ask this Court (at 27-28) to find the matter "prudentially moot." Defendants argue that "[a] court may abstain under this doctrine in suits for declaratory or injunctive relief where the defendant 'clearly . . . modified their behavior significantly since the suit was brought,' such that 'the likelihood of recurrent confrontations . . . is much too small to warrant' a decision." Defs.' Br. 28 (quoting *United Spinal Ass'n, Inc. v. O'Malley*, No. 20-CV-2236, 2024 WL 3400259, at *10 (D.D.C. July 11, 2024)).

As an initial matter, it is doubtful whether this "prudential" mootness doctrine has survived the Supreme Court's recent admonitions that a "federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126 (2014) (citation omitted). Indeed, the D.C. Circuit has admonished a district court for relying on "practical considerations" in declining to hear a case that was not constitutionally moot. *Zukerman v. U.S. Postal Serv.*, 961 F.3d 431, 445 (D.C. Cir. 2020); *see also Sierra Club v. U.S. Army Corps of Eng'rs*, 803 F.3d 31, 44 (D.C. Cir. 2015) ("This case presents a live controversy, and we reject [the] suggestion that we dismiss the appeal for prudential reasons.").

But even assuming the prudential mootness doctrine remains good law, its strictures are not met here. Prudential mootness applies when the defendant has "'clearly . . . modified [its] behavior significantly'" such that there is little relief left to grant. *United Spinal Ass'n*, 2024 WL 3400259, at *10 (citation omitted). But the promise to make a change in the future cannot prudentially moot a case. *See id.* (finding claim not prudentially moot where "Defendant admits

that it has not changed its policies or regulations" because "there is no reason for the court to believe that Defendant will [make the change] if this case does not move forward").

Here, Defendants have by no means "modified [their] behavior significantly." *Id.* Defendants contend (at 27-28) that "CSOSA and the Commission have already implemented sweeping measures to improve their identification and treatment of individuals with disabilities," including by: (1) "re-creating intake forms"; (2) "re-creating . . . hearing examiner worksheets"; (3) "implementing training on disabilities and reasonable accommodations"; and (4) "revamp[ing] [CSOSA's] entire case notes system to better account for identification of individuals who identify disabilities." Defs.' Br. 27-28 (citing Forsha Decl. ¶¶ 5-6). But the Forsha Declaration makes clear that those measures are either not currently in effect, or constitute minor (not "sweeping") changes:

- The referenced intake form is not currently in effect and has not even been approved by the Office of General Counsel. *See* Forsha Decl. ¶ 6 ("The Disability Data Collection Form has been provided to the Office of General Counsel (OGC) for review and approval."); *see also id.* (explaining that there "is no identified delivery date" for the Office of Information Technology to incorporate this form into CSOSA's SMART21 case management system).
- The "trainings on disabilities and reasonable accommodations" have similarly not been implemented. *Id.* ("Additional training *will be* provided . . . ." (emphasis added)). Indeed, it is not even clear from the declaration what this training will cover, or when it will be provided.[10]

[10] To the extent Defendants are referring to trainings by the Commission, as opposed to CSOSA, that assertion is inconsistent with the Vela Deposition, which confirmed that the Commission has no training on disabilities and reasonable accommodations. Vela Dep. 101:1-103:4; *supra* at 32.

- As for CSOSA "revamp[ing] its entire case notes system," that is also aspirational as the proposed new intake system (i.e., the Disability Data Collection Form discussed above) is not currently in effect. *See id.*
- Finally, while the hearing examiner worksheet has been revised, *see* Vela Decl. ¶ 26, the change is not a material one, because the Commission does not require hearing examiners to complete the portion related to disabilities and accommodations; the Commission concedes that it is not always filled out; and the Commission provides no training on how to fill it out. *See* Vela Dep. 93:3-19; 94:19-22; SUMF Resp. ¶ 207.

Even if all of the above changes had actually been implemented (they haven't), Defendants' reliance on them would still be legally insufficient because voluntary cessation of challenged conduct does not moot a case. The voluntary cessation doctrine exists to prevent a party from "manipulating 'the judicial process through the false pretense of singlehandedly ending a dispute.'" *Pub. Citizen, Inc. v. FERC*, 92 F.4th 1124, 1128 (D.C. Cir. 2024) (citation omitted). Under this doctrine, where "a party voluntarily ceases the challenged activity," "the case remains live unless it is 'absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur.'" *Id.* The "standard [] for determining whether a case has been mooted by the defendant's voluntary conduct is stringent," *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000), and Defendants bear the "heavy burden" of showing that "(i) there is no reasonable expectation . . . that the alleged violation will recur, and (ii) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation." *Aref v. Lynch*, 833 F.3d 242, 251 (D.C. Cir. 2016). The Supreme Court has confirmed that this standard "holds for governmental defendants no less than for private ones." *FBI v. Fikre*, 601 U.S. 234, 241 (2024).

A defendant cannot "'automatically moot a case' by the simple expedient of suspending its challenging conduct after being sued"; rather, it must "show that the practice cannot 'reasonably be expected to recur.'" *Id*.

As to the first requirement, Defendants have not shown that "there is no reasonable expectation . . . that the alleged violation will recur." *Aref*, 833 F.3d at 251. Given that the proposed changes would be made through guidance documents, they could be revoked or modified at any time. Further, Defendants' responses to Plaintiffs' SUMF reinforce that they lack a fundamental understanding of disabilities and accommodation needs and are thus far from the required "near-permanent change in the status quo," *Lewis*, 2026 WL 875277, at *17. For instance, Defendants admit that [redacted] Likewise, Defendants deny that [redacted]

And while the Court need not reach the second requirement, Defendants do not meet that one either. Defendants cannot show that the proposed corrective action will "completely and irrevocably eradicate[] the effects of the alleged violation," *Aref*, 833 F.3d at 251, especially given Defendants have admittedly lacked any guidance on accommodating individuals with disabilities for at least a decade, SUMF Resp. ¶ 213. For these reasons, Plaintiffs' claims are not moot.

Defendants cannot escape this conclusion by invoking prudential mootness instead of constitutional mootness. Even in the prudential mootness context, a court must assess whether there remains a "cognizable danger of recurrent violation," taking into account "the bona fides of the expressed intent to comply, the effectiveness of the discontinuance and . . . the character of the past violations." *Cmty. for Creative Non-Violence v. Hess*, 745 F.2d 697, 700-01 (D.C. Cir. 1984) (citation omitted). And this Circuit has never held that the exceptions to jurisdictional mootness are inapplicable in the prudential mootness context. *See City of New York v. Baker*, 878 F.2d 507, 509-12 (D.C. Cir. 1989) (rejecting prudential mootness where government voluntarily ceased challenged practice but "could renew it"); *cf. Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1122 (10th Cir. 2010) ("A voluntary-cessation evaluation may be an important component of the overall analysis with respect to both constitutional and prudential mootness."). Defendants' proposed changes, even if implemented, fall far short of their burden.

### C. *Burford* Abstention Is Inapplicable

In a throwaway argument at the end of their brief (at 28), Defendants ask this Court to abstain under *Burford*, but that doctrine is plainly inapplicable. Under *Burford*, "[w]here timely and adequate state-court review is available," federal courts "must decline to interfere with the proceedings or orders of state administrative agencies: (1) when there are 'difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar'; or (2) where the 'exercise of federal review of the question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.'" *New Orleans Pub. Serv., Inc. v. Council of New Orleans* (*NOPSI*), 491 U.S. 350, 361 (1989). "*Burford* represents an 'extraordinary and narrow exception to the duty of the District Court to adjudicate a controversy properly before it.'"

*Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 728 (1996); *see 3883 Conn. LLC v. District of Columbia*, 191 F. Supp. 2d 90, 92 (D.D.C. 2002) (D.C. Circuit rarely abstains under *Burford*).

Defendants make no attempt to explain why this "extraordinary and narrow exception" applies, *Quackenbush*, 517 U.S. at 728, and it plainly does not. To start, Defendants do not identify any "timely and adequate state-court review" available, *NOPSI*, 491 U.S. at 361, and Plaintiffs are aware of none. Defendants also fail to identify any "state administrative agencies" whose "proceedings or orders" would be impacted by this case. *Id.* Defendants admit that they are federal, not state, agencies, ECF No. 74-2 at 2, so any interference with their proceedings does not count. Moreover, Defendants identify no "difficult questions of state law" that would need to be resolved or state "policy" "efforts" this Court's review would "disrupt[]." *NOPSI*, 491 U.S. at 361. While Defendants state that "CSOSA and the Commission implement complex regulatory programs in accordance with state law which bear on policy problems of public import," Defs.' Br. 28, "simply advancing this assertion does not make it so," *Francis v. Omni Hotels Mgmt. Corp.*, 2026 WL 851999, at *3 (W.D. Ky. Mar. 26, 2026) (declining to abstain under *Burford*). Defendants do not identify any relevant state law, and "[t]his Court has no obligation to guess at what [Defendants] mean[] and then rule on the merits of that guess." *Id.* To be sure, the D.C. Superior Court is responsible for ordering supervised release, but this case does not present the question of whether any person should be sentenced to supervised release. Rather, this case concerns whether federal agencies (CSOSA and the Commission) are complying with federal law (the Rehabilitation Act) with respect to individuals who have already been sentenced and released on supervised release and parole. The District of Columbia does not have any role in the administration of supervised release and parole after individuals are sentenced. *See* ECF No. 61-7 at 3. Because "[r]esolution of [Plaintiffs'] central claim"—that Defendants' violated the Rehabilitation Act—"will not require

this court to intrude unduly into sensitive areas of local policy or regulation," Defendants' *Burford* argument fails. *3883 Conn. LLC*, 191 F. Supp. 2d at 92.

## CONCLUSION

For the foregoing reasons, this Court should grant summary judgment to Plaintiffs on liability, deny Defendants' cross-motion for summary judgment, and expeditiously set a status conference to address remedy proceedings.

Dated June 3, 2026

Respectfully submitted,

ALLISON FRANKEL (*Pro Hac Vice*)
afrankel@aclu.org
ASHIKA VERRIEST
D.C. Bar No. 90001468
averriest@aclu.org
ABRAHAM EVANS *(Pro Hac Vice)*
a.evans@aclu.org
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street
New York, NY 10004
Tel.: (212) 549-2500

SCOTT MICHELMAN
D.C. Bar No. 1006945
smichelman@acludc.org
MICHAEL PERLOFF
D.C. Bar No. 1601047
mperloff@acludc.org
LAURA K. FOLLANSBEE
D.C. Bar No. 1782046
lfollansbee@acludc.org
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF THE DISTRICT OF COLUMBIA
529 14th Street NW, Suite 722
Washington, D.C. 20045
Tel.: (202) 457-0800

WARD A. PENFOLD (*Pro Hac Vice*)
ward.penfold@lw.com
LATHAM & WATKINS LLP
330 North Wabash Avenue, Suite 2800
Chicago, IL 60611
Tel.: (312) 876-7700

*/s/ Christine C. Smith*
HANNA M. PERRY
D.C. Bar No. 90003756
hperry@pdsdc.org
ZOÉ FRIEDLAND
D.C. Bar No. 1781910
zfriedland@pdsdc.org
PUBLIC DEFENDER SERVICE FOR THE DISTRICT OF COLUMBIA
633 3rd Street NW
Washington, D.C. 20004
Tel.: (202) 579-0633

SAMIR DEGER-SEN
D.C. Bar No. 1510881
samir.deger-sen@lw.com
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020
Tel.: (212) 906-1200

CHRISTINE C. SMITH
D.C. Bar No. 1658087
christine.smith@lw.com
CHANELLE N. JONES
D.C. Bar No. 90033820
chanelle.jones@lw.com
DANAYIT MUSSE
D.C. Bar No. 1735499
danayit.musse@lw.com
LIA ROSE BARRETT
D.C. Bar No. 90008536
lia.barrett@lw.com
ELIZABETH H. MCELVEIN
D.C. Bar No. 90010703
elizabeth.mcelvein@lw.com
LATHAM & WATKINS LLP
555 Eleventh Street NW, Suite 1000
Washington, D.C. 20004
Tel.: (202) 637-2200

*Attorneys for Plaintiffs*