Disabling the ADA: How the U.S. Prison & Judicial Systems Hinder the Effectiveness of the Americans with Disabilities Act

Aidan O'Brien *

* I began my research on this topic as an extern with Abolish Private Prisons (APP) in 2023. I would like to sincerely thank Robert Craig and John Dacey from APP for their support, encouragement, and feedback. I am so grateful for my time with APP and the opportunity to delve into this important research.

INTRODUCTION[1]

Disabled individuals are overrepresented in United States prisons.[2] Out of every five people who are currently incarcerated, two have at least one disability.[3] Therefore, approximately 40% of the prison population is disabled—as opposed to the general population, where only 27% of adults have a disability.[4] Despite being an overrepresented population, disabled individuals in prison face significantly more barriers than their non-disabled peers. As Professor Prianka Nair writes, "[f]ilthy living conditions, inadequate medical and mental health care, and accounts of abuse and neglect make life in prison unbearable, particularly for individuals with disabilities."[5] However, despite the high prevalence of disability within the carceral system—and the system's detrimental effects on those incarcerated[6]—relatively little research has been done on the disproportionate burden disabled people face when navigating the legal system while incarcerated.

Narrow judicial interpretations, procedural barriers, and limited transparency leave disabled individuals in prison vulnerable to discrimination while also forming barriers to successful claims. The purpose of this Note is two-fold: First, to bring attention to the barriers

---

1. At the outset of this Note, I would like to make a brief statement about the language that I will be using. When doing disability rights research, or having conversation with members of the disability community, you will often hear about the concept of "person-first" vs. "identity-first" language. Using person-first language, you would say "person with a disability." Using identity-first language, you would say "disabled person" or "disabled individual." This Note will primarily use identity-first language. As a disabled individual myself, I prefer identity-first language. The intent behind person-first language is to emphasize that the humanity of the person is separate from their disability. While this seems like a positive idea, many disabled individuals (myself included) feel that they shouldn't have to separate their humanity from their disability because their disability is a part of them. Disability is integral to who we are and therefore a part of our humanity. While I recognize that disability is not a monolith and some disabled people do prefer person-first language, I personally prefer identity-first language and will be using it throughout this Note.

2. Laura Maruschak et al., *Disabilities Reported by Prisoners: Survey of Prison Inmates*, BUREAU OF JUSTICE STATISTICS 1 (Mar. 2021), https://bjs.ojp.gov/library/publications/disabilities-reported-prisoners-survey-prison-inmates-2016 [https://perma.cc/JB3H-SAEY].

3. *Id.*

4. *Disability Impacts All of Us*, CENTERS FOR DISEASE CONTROL & PREVENTION 1 (2023), https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html [https://perma.cc/3LZ4-VD49].

5. Prianka Nair, *The ADA Constrained: How Federal Courts Dilute the Reach of the ADA in Prison Cases*, 71 SYRACUSE L. REV. 791, 791–92 (2021).

6. Laurin Bixby et al., *The Links Between Disability, Incarceration, and Social Exclusion*, 41 HEALTH AFFAIRS 1460, 1460 (2022) ("[P]risons and other carceral institutions are characterized by high levels of stress, fear, social isolation, infectious disease, and violence expose, all of which can increase disability risks."). *See also* LIAT BEN-MOSHE, DECARCERATING DISABILITY: DEINSTITUTIONALIZATION AND PRISON ABOLITION 148 (2020) (describing the impacts of prison conditions on nondisabled individuals).

incarcerated disabled individuals face when trying to bring an ADA claim, and second, to provide suggestions for how to bring a successful ADA claim. Part I of this Note discusses the relationship between ableism and the carceral system. Part II provides an overview of the barriers facing disabled individuals in prison. Part III discusses the common reasons that ADA claims are dismissed in court. Part IV discusses strategies for making an ADA claim against a prison that is likely to survive. Part V presents the conclusion to this Note.

I. ABLEISM AND THE CARCERAL SYSTEM

The deep connections between ableism and the carceral system form the backdrop for any conversation involving prisons. Activist and philosopher Angela Davis once said that "carceral practices are so deeply embedded in the history of disability that it is effectively impossible to understand incarceration without attending to the confinement of disabled people."[7] Throughout history, the label of disability has been used to justify incarceration.[8] The label of disability was also applied to entire groups of people to justify the deprivation of their rights.[9] For decades, the government argued that disabled individuals should be "locked away for the 'protection' of the community" until they could be "rehabilitated."[10] Rehabilitation was the "forcible excising of abnormality," used to promote "governance and social control," with claims that it cured disability.[11]

While the government no longer uses this overt kind of ableism to justify incarceration and punishment, "the continued incarceration of disabled and predominantly black bodies suggests that incarceration serves broader capitalist purposes unrelated to the commission of crime."[12] Many activists and scholars talk about the "prison industrial complex" as a way to recognize the connections between prison, labor, and profit.[13] The prison industrial complex "is based on a set of interests created and maintained to support capitalism, patriarchy, imperialism, colonialism, racism, ableism, and white supremacy."[14] In a system where production and profit are the priorities, disabled individuals are expendable.[15]

7. *Id.* at 796.
8. *Id.*
9. *Id.* at 797.
10. BEN-MOSHE, *supra* note 6, at 797–98.
11. *Id.* at 798.
12. *Id.* at 799.
13. *See id.* at 800.
14. *Id.*
15. *See* BEN-MOSHE, *supra* note 6, at 800.

Though courts are responsible for narrowing the intentionally broad language of the ADA, the issue of ableism runs much deeper. Ableism is inextricably linked with our legal system. It is undoubtedly important to be aware of the depth of this issue—and it is equally important to know what tools we can use to seek justice now. While keeping the ultimate goal of uprooting ableism from our systems in mind, we must take meaningful local and individual action to improve access to justice for those who are at the intersection of disability and incarceration.

II. BARRIERS FACING DISABLED INDIVIDUALS IN PRISON

A. Legal Barriers

The Americans with Disabilities Act (ADA) was passed to protect the rights of disabled individuals and to provide them with a means to enforce those rights.[16] For those incarcerated, it created seemingly robust protection; in theory, it required prison officials to "avoid discrimination; individually accommodate disability; maximize integration of prisoners with disabilities with respect to programs, service and activities; and provide reasonable treatment for serious medical and mental health conditions."[17] However, what is supposed to happen in theory is not necessarily what happens in practice. In practice, the ADA is not providing adequate protection for disabled individuals who are incarcerated. A plethora of factors are hindering the ADA's ability to hold prisons accountable, including narrow judicial interpretations of the ADA's applicability, inadequate prison oversight, inability to access important information, and barriers resulting from the Prison Litigation Reform Act (PLRA).[18] As such, incarcerated disabled individuals face an uphill battle when attempting to enforce their rights. Making a successful ADA claim[19] is far more challenging than it should be (particularly for those in private prisons) and many ADA claims fail in the early stages of the legal process.

---

16. 42 U.S.C. § 12101(b)(1).

17. MARGO SCHLANGER, *Prisoners with Disabilities*, *in* REFORMING CRIMINAL JUSTICE: PUNISHMENT, INCARCERATION, AND RELEASE 295, 301 (E. Luna ed., 2017).

18. *See generally* Nair, *supra* note 5.

19. Title II of the ADA applies to government agencies and entities. 42 U.S.C. § 12131(1)(B). Relying on the language of Title II, a prima facie Title II claim requires a plaintiff to demonstrate that:

(1) [They] are a qualified individual with a disability; (2) the defendant is subject to the ADA; and (3) the plaintiff was denied the opportunity to participate in or benefit from the defendant's services, programs, or activities or was otherwise discriminated against by the defendant, by reason of the plaintiff's disability.

See Wolfe v. Ohio Dep't of Rehab. & Corr., 2011 Ohio 6825, 2011 Ohio App. LEXIS 56462011 WL 6931479, at ¶ 16 (Oh. Ct. App. Dec. 30, 2011) (explaining what plaintiffs need to show to sufficiently plead an ADA Title II claim).

Even claims that survive the pleading stage may nevertheless get dismissed because private individuals are unable to meet the high burden of proving intent; a requirement that is imposed by most courts but that is not found anywhere within the text of the ADA.[20] Additionally, some courts have held that there is no way to hold private prisons directly accountable for violations of the ADA, further complicating the ability of incarcerated individuals to enforce their rights and obtain a remedy.[21] Though clearly broad in its purpose, the ADA has been narrowed by courts almost from the time of its inception,[22] to the detriment of disabled individuals incarcerated in prisons. Caselaw regarding disability nondiscrimination claims demonstrates how challenging it is for this class of people to enforce their rights under the ADA.

B. Lack of Transparency

Not only do narrow interpretations and procedural barriers make it increasingly harder to sue but, due to a lack of transparency in both public and private prisons, the full extent of the issue remains unclear. [23] Transparency is "integral" to a healthy democracy because it allows members of the public to make informed decisions and play an important role in oversight.[24] Prisons are "shrouded in secrecy," making public awareness and oversight extremely challenging.[25] Media access is limited and up to the discretion of prison officials, restricting the ability of investigative journalists to gather—let alone publish—information about the conditions of the prisons and those residing within them.[26] The Bureau of Justice Statistics (BJS) uses voluntary questionnaires to collect data from prisons, but the information is limited and collection only happens every five to seven years.[27] These questionnaires collect only general information, and data about vulnerable groups—including disabled

20. *See* Mark C. Weber, *Accidently on Purpose: Intent in Disability Discrimination Law*, 56 B.C. L. REV. 1417, 1418 (2015) (describing how courts demand a showing of intent that is not found within the text of the ADA).

21. Edison v. Douberly, 604 F.3d 1307, 1310 (11th Cir. 2010) (opining that private prisons are not "instrumentalities of the state" for purposes of the ADA). *See also Johnson v. Neiman*, 504 F. App'x 545 (8th Cir. 2013) (holding private contractors in state prisons are not covered by the ADA)

22. Nair, *supra* note 5, at 802.

23. *See* Andrea Armstrong, *No Prisoner Left Behind? Enhancing Public Transparency of Penal Institutions*, 25 STAN. L. & POL'Y REV. 435, 465 (2014).

24. *See id.* at 458.

25. *Id.* at 462.

26. *See id.*

27. Armstrong, *supra* note 23, at 463–64.

individuals—is not collected.[28] The limited access to and collection of information hinders the public's ability to engage in oversight.

C. Barriers Unique to Private Prisons[29]

The growth of the private prison system was intended to shift the burden of incarceration away from public entities,[30] but in doing so, public entities were able to shift much of their responsibility as well. Rather than operating a public prison directly, the government pays private prisons "to perform the functions of incarceration and punishment."[31] Many legal scholars and activists view the government's use of private prisons for the government's needs as an improper delegation[32] of government power.[33]

As of 2021, 96,873 people are incarcerated in private for-profit prisons, making up around 8% of the total prison population nationwide.[34] The federal government has recognized the problematic nature of private prisons, with President Biden issuing an executive order naming several reasons to eliminate the use of privately operated detention facilities.[35] First, the profit-based motives of private prisons are contributing to the issue of mass incarceration in the United States.[36] Second, private facilities consistently underperform with respect to correctional services, programs,

---

28. *See id.* at 463.

29. Private prisons are operated by private, for-profit corporations, such as GEO Group and CoreCivic. *Why Abolish Private Prisons, FAQs, What are private prisons?*, ABOLISH PRIVATE PRISONS, https://www.abolishprivateprisons.org/the-issue/ [https://perma.cc/Q6JL-VX93] [Hereinafter ABOLISH PRIVATE PRISONS]. These corporations that contract with the government to house incarcerated individuals in their facilities and maintain operational control of their prisons. *Id.*

30. Wendi Witherell, *The Privatization of the Prison System in the United States: A Comparative Study of Rehabilitative Resources* (May 2022) (MSW project, California State University, San Bernardino), https://scholarworks.lib.csusb.edu/cgi/viewcontent.cgi?article=2557&context=etd#:~:text=Prison%20privatization%2C%20or%20for%2Dprofit,burden%20off%20the%20public%20system [https://perma.cc/ZY3U-TZ7N] ("The privatization of the prison system was designed to take some of the burden off the public system.").

31. ABOLISH PRIVATE PRISONS, *supra* note 29.

32. The federal government is restrained by the nondelegation doctrine, meaning that they are "not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested." A.L.A. Schecter Poultry Corp. v. U.S., 295 U.S. 495, 529 (1935).

33. *See generally* Jacob Charles & Darrel Miller, *Violence & Nondelegation*, 135 HARV. L. REV. 463 (2022); J.E. Field, *Making Prisons Private: An Improper Delegation of a Governmental Power*, 15 HOFSTRA L. REV. 649 (1987); Robert Craig & Andre Cummings, *Abolishing Private Prisons: A Constitutional & Moral Imperative*, 49 UNIV. BALT. L. REV. 261, 283 (2020) ("core governmental functions cannot be delegated to private parties.").

34. Kristen Budd, *Private Prisons in the United States*, THE SENTENCING PROJECT (Feb. 21, 2024), https://www.sentencingproject.org/reports/private-prisons-in-the-unitedstates/ [https://perma.cc/5DMS-QUR4].

35. Exec. Order. No. 14006, 3 C.F.R. § 474 (2021), https://www.govinfo.gov/content/pkg/CFR-2022-title3-vol1/pdf/CFR-2022-title3-vol1-eo14006.pdf [https://perma.cc/T29E-DB5M].

36. *See id.*

and resources, negatively impacting incarcerated individuals' likelihood of successful reintegration.[37] Third, private facilities fail to maintain satisfactory levels of safety and security, putting incarcerated individuals at a higher risk for harm.[38] Following the issuance of the executive order, the Bureau of Prisons announced that they would be ending the use of privately owned prisons.[39] In recent years, states have also started moving away from the use of private prisons.[40] While the reliance on out-sourcing incarceration to private prisons has declined, Alaska, Montana, New Mexico, Hawaii, Tennessee, and Arizona continue to house large numbers of people in these problematic facilities.[41]

Lack of transparency and access to information is a serious problem with private prisons, presenting a serious barrier to holding private prisons accountable. Public prisons are subject to the Freedom of Information Act (FOIA), which allows the public to review prison conditions and advocate for specific changes to facilities.[42] However, private prisons are not subject to the FOIA, which makes it extremely difficult to get records,

37. *Id.*

38. *See id.* A study from the U.S. Department of Justice showed that violent attacks on correctional staff were 163% higher in private prisons, and inmate-on-inmate assaults were nearly 30% higher. *See The Case Against Private Prisons: Why Outsourcing Public Safety Puts Communities at Risk*, AM. FED'N STATE CNTY. MUN. EMPS., https://www.afscme.org/blog/the-case-against-private-prisons [https://perma.cc/4LRL-USL5]; Office of the Inspector General, U.S. DEP. OF JUSTICE, *Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons*, EVALUATION AND INSPECTIONS DIVISION REP. NO. 16-06 (Aug. 11, 2016), https://oig.justice.gov/reports/2016/e1606.pdf [https://perma.cc/AE7Y-PA6D].

39. *BOP Ends Use of Privately Owned Prisons*, FEDERAL BUREAU OF PRISONS (Dec. 1, 2022), https://www.bop.gov/resources/news/20221201_ends_use_of_privately_owned_prisons.jsp [https://perma.cc/EF3D-NRF4].

40. *See The Case Against Private Prisons: Why Outsourcing Public Safety Puts Communities at Risk*, AM. FED'N STATE CNTY. MUN. EMPS., https://www.afscme.org/blog/the-case-against-private-prisons [https://perma.cc/4LRL-USL5]; *Private Prisons: The Wrong Choice For Alabama*, S. POVERTY L. CTR. (Oct. 30, 2017), https://www.splcenter.org/20171030/private-prisons-wrong-choice-alabama [https://perma.cc/P3XK-2Z7W]; Keaton Ross, *Oklahoma Inches Closer to Eliminating Private Prisons*, OKLA. WATCH (Aug. 31, 2023), https://oklahomawatch.org/2023/08/31/oklahoma-inches-closer-to-eliminating-private-prisons/ [https://perma.cc/MXN9-Q2E6]; Lily Fowler, *Washington Could Become the Next State to Ban Private Prisons*, CASCADE PBS (Jan. 23, 2020), https://crosscut.com/2020/01/washington-could-become-next-state-ban-private-prisons [https://perma.cc/44UM-K9P2].

41. *See* Budd, *supra* note 34.

42. *See* Alex Park, *Will Private Prisons Finally be Subject to the Freedom of Information Act?*, MOTHER JONES (Dec. 16, 2014, 11:45 AM), http://www.motherjones.com/mojo/2014/12/will-private-prisons-ever-subject-open-records-laws [https://perma.cc/ZKH5-9NAD]; *see also* NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 242 (1978) (opining that "the basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed."); NARA v. Favish, 541 U.S. 157, 171–72 (2004) (explaining that "FOIA. . .[is] a means for citizens to know what their Government is up to.").

information, or reports regarding conditions in private prisons.[43] Gathering even the most basic information about private prisons takes significant time and effort; it took days of research and information gathering just to find the names and locations of the private prisons within the United States. It took several more days to find correct and current contact information for those facilities. It is next to impossible to find important information about the experience of incarcerated disabled individuals in private prisons, such as how they are treated, whether they receive necessary accommodations, how often accommodations are granted, and if their rights are being protected. Private prison websites are unhelpful and provide little to no guidance on how to request data or whether the data will even be provided upon request. Information about private prison operations, living conditions, prisoner demographics, violent altercations, and budgets remains unavailable for public viewing.[44] As discussed above, this lack of information renders the public unable to participate in the oversight of prison operations, leaving that burden to rest primarily with incarcerated individuals.[45]

There is also a serious lack of access to information regarding the application of the ADA in private prisons. In an attempt to highlight how disabled people are treated in private prisons, a weeks-long search for information about how the ADA is enforced and monitored in private prisons was conducted—unfortunately, next to nothing could be found. Sadly, the caselaw is not on the side of those incarcerated. While there is not a total consensus, many courts have rejected the idea that private prisons are "public entitles" under Title II of the ADA.[46] These rulings make it easier for private prisons to evade accountability for abusive practices. As the caselaw currently stands, this narrow interpretation of Title II's "public entity" requirement creates a significant gap in the

43. Mike Tartaglia, *Private Prisons, Private Records*, 94 BOS. UNIV. L. REV. 1689, 1691 (Oct. 2014).

44. Much of this information is required under FOIA. *See* Park, *supra* note 42.

45. *See* Armstrong, *supra* note 23, at 462.

46. *See* Green v. City of New York, 465 F.3d 65 (2d Cir. 2006) (defining public entities as a traditional governmental unit, however, the case focused on a private hospital not a private prison); Edison v. Douberly, 604 F.3d 1307, 1310 (11th Cir. 2010) (extending the reasoning in *Green v. City of New York* to private prisons); *Johnson v. Neiman*, 504 F. App'x 545, 543 (8th Cir. 2013).3 (same); Phillips v. Tiona, 508 F. App'x 737 (10th Cir. 2013) (same); Lee v. Corr. Corp. of Am./Corr. Treatment Facility, 61 F. Supp. 3d 139 (D.D.C. 2014) (same); Castle v. Eurofresh, Inc., 74 F.Supp.2d 938, 943 (D. Ariz. 2010) (concluding that a private company that contracts with a state prison is not an instrumentality of the state under the ADA) (internal quotes omitted). However, the Ninth Circuit has taken a different approach to private prisons applicability to federal nondiscrimination law. *See* Knows His Gun v. State, 866 F. Supp. 2d 1235 (D. Mont. 2012) (D. Mont. 2012) (holding that private prisons are "public entities" for the purposes of the Religious Land Use and Institutionalized Persons Act). The U.S. Supreme Court has yet to rule on the issue.

judicial system—leaving disabled individuals in private prisons unable to hold the person or entity that violated their rights directly accountable.[47] Private prisons also follow a pattern of states attempting to outsource responsibilities to private entities in a not-so-subtle attempt to avoid liability.[48] Because of this, individuals in private prisons are at a special disadvantage based on current interpretations of the ADA.[49]

Though private prisons cannot be held directly liable under the ADA, private prisons are obligated to adhere to the ADA through their contracts with the government.[50] By forming a relationship with a public entity, the private prison may also subject itself to liability under Title III of the ADA. When public and private entities act jointly, the public entity is responsible for compliance with Title II, and the private entity is responsible for compliance under Title III.[51] Though it appears that private prisons are responsible—in one way or another—for compliance with the ADA, there is currently no system of monitoring ADA compliance, making it extremely challenging to know whether private prisons are actually fulfilling their contractual obligations. An ADA specialist from the ADA information hotline confirmed that each state's Department of Correction (DOCs) is largely "left on their own" to comply with the ADA as it pertains to private prison oversight, since the federal government does not have the capacity to take on every viable complaint. While the U.S. Department of Justice can bring cases against the state's DOC even if the harm takes place in private prison, the number of cases brought by the agency does not represent the full scope of the alleged harm. More effective enforcement actions are needed.

Monitoring systems in the state prison systems themselves are also frequently nonexistent. Public entities with more than fifty employees are

47. *See Lee*, 61 F. Supp. 3d at 143–44.

48. *See generally* Margo Schlanger, *Narrowing the Remedial Gap: Damages for Disability Discrimination in Outsourced Federal Programs*, 87 U. CHI. L. REV. ONLINE 1 (2021); Kimberly Leonard, *States Efforts to Outsource Prison Health Care Come Under Scrutiny*, KFF HEALTH NEWS (July 22, 2012), https://kffhealthnews.org/news/prison-health-care/ [https://perma.cc/HQ7W-R2VN]; Alfred Aman, Jr. & Joseph Dugan, *The Human Side of Public-Private Partnerships: From New Deal Regulation to Administrative Law Management*, 102 IOWA L. REV 883 (2017); William Bulkeley, *Glitches Mar Indiana's Effort to Outsource Social Services*, WALL ST. J. (Aug. 12, 2009), https://www.wsj.com/articles/SB125003802691324435 [https://perma.cc/3VRW-SMFH]; Tartaglia, *supra* note 43, at 1689.

49. *Lee*, 61 F. Supp. at 143.

50. Armstrong v. Schwarzenegger, 622 F.3d 1058, 1066 (9th Cir. 2010) ("That a public entity has contracted for the provision or occurrence of such services, programs and activities seems sufficient to make them the services, programs, or activities of [the public] entity") (internal quotes omitted).

51. *The Americans with Disabilities Act Accessibility Guidelines*, ADA TITLE III TECHNICAL ASSISTANCE MANUAL § III-7.0000, https://www.ada.gov/resources/title-iii-manual/ [https://perma.cc/C4CK-679R].

required to designate at least one employee to ensure compliance with the ADA.[52] This individual, commonly referred to as the ADA Coordinator, is responsible for coordinating the efforts of the public entity to comply with the law and investigating complaints that the law has been violated.[53] Some state DOCs employ ADA Coordinators who assist with accommodations decisions and help prison officials understand ADA requirements.[54] These coordinators oversee DOC facilities in their state, including privately operated facilities.[55] Some of these coordinators work state-wide and are responsible for overseeing all DOC facilities in a given state, while some coordinators only oversee a single facility.[56] It is challenging to find information about—or get information from—these ADA Coordinators. While these coordinators could play a vital role in monitoring and enforcing the ADA in private prisons, they are likely underpaid, understaffed, and overworked, hindering their potential for effective oversight. Once again, incarcerated individuals are left to bear the burden of enforcement.

D. Oversight Through Litigation

With a lack of effective oversight from the public or regulatory bodies, incarcerated disabled individuals are left to pursue enforcement through litigation. Unfortunately, as this Note will demonstrate, there are many barriers to successful litigation for disabled individuals in prison. Incarcerated individuals often proceed *pro se*, trying to navigate a complicated and technical process without the help of a legal professional. This can result in dismissal of claims, not because they are necessarily without merit, but because they were not adequately pled according to legal requirements and procedures. Early dismissal of claims hinders the creation of precedential cases that future incarcerated litigants can rely on and results in the continued lack of ADA oversight and enforcement.

---

52. Having an ADA Coordinator is also strongly recommended for organizations that are not technically required to under the law. ADA COORDINATOR, NOTICE & GRIEVANCE PROCEDURE: ADMINISTRATIVE REQUIREMENTS UNDER TITLE II OF THE ADA, https://archive.ada.gov/pcatoolkit/chap2toolkit.htm [https://perma.cc/9EVH-NSXU].

53. *Id.*

54. *See Americans with Disabilities Act (ADA) Compliance*, CITY OF KINGMAN, https://www.cityofkingman.gov/government/ada-compliance [https://perma.cc/VE4V-GLT4]; *ADA Coordinators or Class Action Management Unit (CC II) Liaisons*, CAL. DEP'T OF CORR., https://www.cdcr.ca.gov/bph/ada-resources/ada-coordinators-or-class-action-management-unit-cc-ii-liaisons/ [https://perma.cc/UE35-VNGL]; *Americans with Disabilities Act Coordinator Named*, GA. DEP'T OF CORR., https://gdc.georgia.gov/press-releases/2021-05-10/americans-disabilities-act-coordinator-named [https://perma.cc/A4F7-NM3F]. These are just a few examples of states with ADA Coordinators.

55. *Id.*

56. *See, e.g.,* OR. ADMIN. R. 291-111-0110(6), (8) (2024).

III. COMMON REASONS CLAIMS ARE DISMISSED

Prison ADA claims are commonly dismissed for failure to state a claim and other specific procedural issues. If a claim is dismissed for failure to state a claim, then the court has determined that either the claim was not cognizable under the law or that there were insufficient facts to meet the elements of the claim. If a claim is dismissed due to procedural issues, it often means that the claim was moot[57] or that the claimant did not meet the exhaustion requirement under the PLRA.[58] When the defendant (typically, a prison) raises any of these issues, the court can dismiss the case and prevent the incarcerated person from refiling the same or similar claim in a future lawsuit.[59] To better protect incarcerated people and strengthen the right to have their allegations fully heard before the court, this Note aims to identify the leading reasons for case dismissal and to provide advice on how to avoid them.

A. Failure to State a Claim

Per Federal Rule of Civil Procedure 12(b)(6), claims may be dismissed for failing to articulate a cognizable legal theory[60] or plead sufficient facts.[61] This does not mean that there is not merit to the allegations in the lawsuits, it just means incarcerated people often do not understand what facts can be challenged by law or how to navigate the procedural technicalities around these cases.[62] An in-depth review of twenty-one cases dismissed on a Rule 12(b)(6) Motion to Dismiss demonstrated that incarcerated individuals encounter three main issues when attempting to argue that what occurred to them was a violation of the law: (1) they have sued the wrong entity; (2) they have alleged a claim involving medical issues; or (3) they have alleged a claim involving labor issues. Additionally, fifteen cases were dismissed because the alleged facts were insufficient to meet the elements of the claim. Because most incarcerated people are not lawyers, they often do not know what or how much information to put in the complaint. Under this category, the main issues encountered by inmates are failing to show: (1) a qualifying

57. Chafin v. Chafin, 568 U.S. 165, 172 (2013).

58. Prison Litigation Reform Act, 42 U.S.C. § 1997e(a) (2012). *See* Woodford v. Ngo, 548 U.S. 81, 85, 92–93 (2006) (describing how incarcerated people must exhaust all available administrative remedies, such as the California Department of Corrections' grievance process, before the case can be brought before the court).

59. *See* Allen v. McCurry, 449 U.S. 90, 94 (1980).

60. Nietzke v. Williams, 490 U.S. 319, 325 (1989).

61. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

62. D. Leven & J. Boston, *Prisoner Lawsuits*, 11 NAT. PRISON PROJECT J. 1, 1–3 (1996).

disability, (2) discriminatory intent, and (3) differential treatment based on disability.

1. Not a Cognizable Legal Theory

A cognizable claim is one that is within the jurisdiction of the court, meaning the court has the power to decide the controversy.[63] Thus, a claim that is not cognizable under the law is dismissed because the court does not have the necessary power and authority to decide the controversy. This section reviews claims that courts have decided they do not have the power to adjudicate under the ADA.

Wrong Entity

Suing the wrong entity is the most common reason that claims made by inmates in private prisons are dismissed. As briefly mentioned above, under many courts' current interpretation, private prisons cannot be held liable for violations under Title II of the ADA.[64] However, this is likely an unnecessarily restrictive interpretation given the text of the statute. Title II defines "public entity" as: "(A) any state or local government, [and] (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government. . . ."[65] The Code of Federal Regulations (CFR) states that Title II:

> [A]pplies to public entities that are responsible for the operation or management of adult and juvenile justice jails, detention and correctional facilities, and community correctional facilities, *either directly or through contractual, licensing, or other arrangements* with public or private entities, in whole or in part, *including private correctional facilities*.[66]

63. STEVEN H. GIFIS, DICTIONARY OF LEGAL TERMS 96 (5th ed. 2016).

64. Lee v. Corr. Corp. of Am./Corr. Treatment Facility, 61 F. Supp. 3d 139, 143 (D.D.C. 2014).

65. 42 U.S.C. § 12131 (1990).

66. Americans with Disabilities Act Title II, 28 C.F.R. § 35.152 (2010) (emphasis added) The CFR provides "codification of the general and permanent rules by the department and agencies of the Federal Government." Rules in the CFR are considered legally binding just as any other statute. *Office of the Federal Register*, NATIONAL ARCHIVES, https://www.archives.gov/federal-register/cfr/about.html#:~:text=The%20Code%20of%20Federal%20Regulations%20(CFR)%20is%20the%20codificcodif%20of,areas%20subject%20to%20Federal%20regulation [https://perma.cc/8V78-J9GF]; *Administrative Law Research: Code of Federal Regulations*, WASHINGTON COLLEGE OF LAW, https://wcl.american.libguides.com/c.php?g=563256&p=3877994#:~:text=These%20rules%20are%20considered%22legally,broad%20subjects%20of%20Federal%20Regulation [https://perma.cc/KKF2-2JJG].

While private prisons may not be held directly liable under Title II, liability for its actions can still be imposed on a *different* entity—the public entity, typically the state's Department of Corrections.[67] Incarcerated individuals often are not aware of this technicality. Below are two examples of cases where Title II claims were dismissed because the plaintiff sued the private facility, rather than the public entity.

In *Lee v. Corrections Corporation of America/Correctional Treatment Facility*, the court dismissed an incarcerated individual's claim because he sued the wrong entity.[68] The plaintiff, a disabled man with a prosthetic leg, was incarcerated in a private prison operated by CoreCivic (then known as Corrections Corporation of America).[69] He was transferred to a non-accessible unit of the facility and, in order to be present for an inmate count, he was required to descend stairs.[70] While attempting to descend the stairs, the plaintiff fell and fractured his neck and left hip.[71] Following the incident, the plaintiff filed a multi-claim suit against CoreCivic, including a Title II claim.[72] CoreCivic then filed a 12(b)(6) Motion to Dismiss for failure to state a claim because the wrong entity had been sued.[73] Ruling in favor of the defendant, the court stated that "while Title II of the ADA covers discrimination taking place in prisons, private prison companies are not directly liable for such violations."[74] The opinion emphasizes that "[a] private contractor does not . . . become liable under Title II merely by contracting with the State to provide governmental services, essential or otherwise."[75] The court did not address whether the defendants' actions constituted a violation of the ADA because, regardless, the claim fails since the named defendants could not be held liable under Title II.[76]

McIntosh v. Corizon provides another example of a claim dismissed despite clear violations of the ADA—solely because the named defendant was a private entity.[77] The plaintiff, McIntosh, was a disabled man with chronic obstructive pulmonary disease (COPD), emphysema, and

67. *See* Americans with Disabilities Act Title II, 28 C.F.R. § 35.152 (2010).

68. *Lee*, 61 F. Supp. at 143–44.

69. *Id.* at 141–44.

70. *Id.* at 141–42.

71. *Id.* at 142.

72. *Lee*, 61 F. Supp. at 142.

73. *Id.*

74. *Id*. at 14.

75. *Id.*

76. *See Lee*, 61 F. Supp. at 143–44.

77. McIntosh v. Corizon, No. 2:14-cv-00099-JMS-MJD, 2018 U.S. Dist. LEXIS 47837, at *17 (S.D. Ind. Mar. 23, 2018).

asthma.[78] Additionally, McIntosh only had one lung after having the other removed due to lung cancer.[79] At the time of this claim, McIntosh was incarcerated at Wabash Valley Correctional Facility in Indiana.[80] Prior to his transfer to Wabash Valley, McIntosh used a portable oxygen tank and a wheelchair to manage his chronic health conditions.[81] However, after being transferred, the portable oxygen tank was taken and replaced with a forty-five-pound oxygen concentrator that had to remain plugged in.[82] Once at Wabash Valley, McIntosh also did not have access to a wheelchair.[83] Without the portable oxygen tank and wheelchair, McIntosh was unable to participate in recreational activities, go to the library, or attend religious services.[84] Over the course of a year, McIntosh filed two requests and two grievances with the facility explaining his need for the oxygen tank and wheelchair to accommodate his medical needs.[85] Finally, several months after filing the lawsuit, McIntosh received a portable oxygen tank.[86] He never received a wheelchair at Wabash Valley. McIntosh was transferred to another facility a month after receiving the portable oxygen tank.[87] He received a wheelchair and portable oxygen tank at the new facility.[88]

In his suit, McIntosh claimed that Corizon, the private corporation that contracted with the prison to provide medical services, violated his rights under the ADA by denying him reasonable accommodations—namely, by preventing him from accessing a wheelchair or portable oxygen tank.[89] In the opinion, the court stated: "[I]t is obvious that [McIntosh] was discriminated against through denial of reasonable accommodations for his disabilities."[90] The court went on to suggest that "it defies reason to take away [McIntosh's] wheelchair and portable oxygen tank" and that the prison was "effectively tying him to his five foot long oxygen tube attached to his 45 pound oxygen concentrator for more than a year."[91] However, because Corizon is not a public entity under the

78. *Id.* at *3.
79. *Id.*
80. *Id.* at *5.
81. *McIntosh*, 2018 U.S. Dist. LEXIS 47837, at *4.
82. *Id.* at *5.
83. *Id.*
84. *Id.* at *9.
85. *McIntosh*, 2018 U.S. Dist. LEXIS 47837, at *6–*12.
86. *Id.* at *11.
87. *Id.* at *12.
88. *Id.*
89. *McIntosh*, 2018 U.S. Dist. LEXIS 47837, at *14.
90. *Id.* at *15.
91. *Id.*

ADA, the court dismissed McIntosh's claim.[92] This case demonstrates that, even when incarcerated disabled people in private prisons adequately demonstrate that their rights were violated, they are still unable to hold those who violated their rights accountable.

2. Claims Involving Medical Issues

Title II claims are also commonly dismissed when the court holds that the controversy was an issue of medical treatment, rather than disability-based discrimination. It is well established that "the ADA was never intended to apply to decisions involving medical treatment."[93] The Supreme Court, however, has been clear that medical services are covered by Title II in one circumstance—if an incarcerated individual is denied the benefit of medical services because of their disability.[94] It is important to note that the ADA addresses discrimination, *not* the medical treatment itself.[95] While the two issues may overlap, courts have consistently held that the ADA does not "create a remedy for medical malpractice."[96] Below are two examples of cases where Title II claims were dismissed because the court determined the claim was related to medical issues rather than discrimination.

In *Mercado v. Department of Corrections*, plaintiff Mercado, an incarcerated individual in Connecticut, was repeatedly diagnosed with bipolar disorder and attention deficit hyperactivity disorder (ADHD) during his incarceration at various facilities from 2013–2015.[97] After being transferred to a new facility in late August 2015, Mercado was re-evaluated and diagnosed with antisocial personality disorder and narcissistic personality disorder, rather than bipolar disorder and ADHD.[98] Because these new medical providers altered plaintiff's diagnosis, the treatment he had been receiving for bipolar disorder and ADHD was discontinued.[99] The plaintiff filed multiple grievances regarding the facility's refusal to provide him with treatment for bipolar disorder and ADHD—each was denied.[100] The plaintiff alleged that, as a consequence

92. *Id.* at *17.

93. Morrison v. Fla. Dep't of Corr., No. 4:18cv576-MW/CAS, 2020 U.S. Dist. LEXIS 269531, at *14 (N.D. Fla. Feb. 22, 2020).

94. *Id.*

95. Mercado v. Dep't of Corr., No. 3:16-CV-1622, 2018 U.S. Dist. LEXIS 87681, at *36 (D. Conn. May 25, 2018).

96. *Id.* (quoting Maccharulo v. New York State Dep't of Corr. Servs., No. 08CIV301LTS, 2010 U.S. Dist. LEXIS 73312, at *8 (S.D.N.Y. 2010)).

97. *Id.* at *1.

98. *Id.* at *8.

99. *Mercado*, 2018 U.S. Dist. LEXIS 87681, at *8.

100. *Id.* at *11.

of the facility's refusal to provide these treatments, he was punished for engaging in behavior consistent with untreated bipolar disorder and ADHD.[101]

For the plaintiff to bring a successful ADA claim, he needed to show "not only that he was denied access to services, but that he was denied access specifically because of his disability."[102] This case illustrates the challenges in proving the latter, especially when the disability is mental rather than physical. Here, the court emphasized that "the ADA prohibits discrimination because of disability, not inadequate treatment for disability."[103] The plaintiff's claim in this case stemmed from what he alleged was an erroneous change in his diagnoses that resulted in his disabilities being left untreated.[104] The court responded that even if the new diagnoses were "erroneous," the claim was still "related to the provision of mental health treatment rather than a discriminatory motive unrelated to [the p]laintiff's medical care."[105] This case demonstrates how narrowly courts have drawn the line between discriminatory treatment under the ADA and receiving inadequate treatment for a disability otherwise covered by the ADA. Incarcerated individuals should be made aware of this distinction, so that they can plead accordingly.

Smith v. Harris County again demonstrates how narrowly courts have drawn the line between discriminatory treatment and inadequate medical treatment.[106] In *Smith*, the plaintiff filed on behalf of her son, a twenty-seven-year-old who died by suicide while incarcerated at Harris County Jail.[107] Hawkins, the decedent, was first detained in Brazoria County Jail when he was around seventeen years old.[108] After his release from incarceration six years later, Hawkins began showing signs of mental health issues, such as hearing and responding to voices.[109] Between 2008 and 2012, Hawkins was subsequently booked into Harris County Jail at least five different times.[110] Over a period of three years, Hawkins attempted to hang himself in his cell on three different occasions—in

101. *Id.* at *10.

102. *Id.* at *35.

103. *Id.* at *36 (quoting Simmons v. Navajo Cnty, 609 F.3d 1011, 1022 (9th Cir. 2010)).

104. *Mercado*, 2018 U.S. Dist. LEXIS 87681, at *22.

105. *Id.* at *36–*37.

106. Smith v. Harris County, No. H-15-2226, 2019 U.S. Dist. LEXIS 237989 (S.D. Tex. Feb. 25, 2019).

107. *Id.* at *2.

108. *Id.*

109. *Id.*

110. *Smith*, 2019 U.S. Dist. LEXIS 237989, at *3.

September 2009, June 2010, and June 2011.[111] During this time, he also reported hearing voices in his head "telling him to kill himself."[112]

Hawkins was booked into Harris County for the last time in July 2012.[113] Between his July 2012 booking and his death in February 2014, he spent significant time in the jail's mental health unit (MHU).[114] When he was not in the MHU, Hawkins was segregated from the other inmates because he was considered a threat.[115] During this period, Hawkins attempted to take his own life several more times—in April 2013, July 2013, and January 2014.[116] Hawkins died just five days after a doctor released him from the MHU following his January 2014 suicide attempt.[117]

Hawkins's mother filed suit against Harris County for violating the ADA by failing to accommodate Hawkins's disabilities and for "placing Hawkins in unsafe housing and failing to monitor him."[118] The jail argued that the real issue was the doctor's choice to release Hawkins from the MHU without providing restrictions.[119] The court agreed, concluding that plaintiff was challenging a medical decision.[120] While the doctor's choice may have been a bad clinical decision, the court held that "the ADA does not provide a remedy for medical malpractice or simply for 'very bad clinical decisions.'"[121] The court went on to reiterate precedent that found that "the ADA is not violated by a prison's simply failing to attend to the medical needs of its disabled prisoners."[122]

---

111. *Id.*

112. *Id.*

113. *Id.*

114. *Smith*, 2019 U.S. Dist. LEXIS 237989, at *3.

115. *Id.*

116. *Id.*

117. *Smith*, 2019 U.S. Dist. LEXIS 237989, at *5.

118. *Id.* at *8, 12–*13 (*quoting* Windham v. Harris County, 875 F.3d 229, 235 (5th Cir. 2017)). A Title II claim requires that the plaintiff "show (1) that he is a qualified individual within the meaning of the ADA; (2) that he is being excluded from participation in, or being denied benefits of, services, programs, or activities for which the public entity is responsible, or is otherwise being discriminated against by the public entity; and (3) that such exclusion, denial of benefits, or discrimination is by reason of his disability[]" and a successful failure to accommodate claim can satisfy the third prong of this test.). A failure to accommodate claim requires that a plaintiff show that either: (1) They identified their disability and requested a specific accommodation or that (2) both their disability and the necessary and reasonable accommodation were "open, obvious, and apparent." *Id.*

119. *Smith*, 2019 U.S. Dist. LEXIS 237989, at *13.

120. *Id.* at *17–*18. The "[p]laintiff's failure-to-accommodate claim based on [the doctor's] decision not to increase Hawkins's monitoring or refer him to the MHU . . . challenge[d] a medical decision."

121. *Id.* at *16.

122. *Id.* at *13 (quoting Nottingham v. Richardson, 499 F. App'x 368, 376 (5th Cir. 2012)).

These cases provide frustrating examples of how courts limit the ADA's protections through their applications and interpretations of the ADA. The Supreme Court has identified medical services as an example of the types of services covered by the text of Title II (i.e., "**services**, programs, or activities of a public entity").[123] Thus, it would seem logical that a failure to provide adequate medical treatment for a disability would constitute a failure to accommodate said disability. Unfortunately, this is not how courts have interpreted the obligations under the statue. The narrow construction courts use leaves incarcerated individuals with disabilities unprotected and creates another gap in the judicial system.[124]

3. Claims Involving Labor Issues

Courts also commonly dismiss ADA claims in prison when they find labor concerns at issue, rather than discrimination. While Title I of the ADA prohibits discrimination in an employment setting, courts have consistently held that Title I does not apply to prison labor.[125] *Wolfe v. Ohio Department of Rehabilitation & Corrections* serves as an example of a claim that was dismissed because Title I does not extend to prison labor.[126]

In *Wolfe*, the plaintiff had severe arthritis that caused his left leg to "give out."[127] The plaintiff also had diabetes, and his medication caused him to feel lightheaded and confused.[128] Wolfe used a cane to help him with walking and stability.[129] While Wolfe was cleaning the prison kitchen, "his cane slipped on the freshly mopped floor."[130] Wolfe tried to catch himself on a wheeled chair, but he fell and injured his right side and back.[131] He brought a claim against the Ohio Department of Rehabilitation and Correction (ODRC) and alleged that the prison failed to properly accommodate him as an employee by requiring him to do work that was

123. *See id.* at *11–*12 (citing Pa. Dep't of Corr. v. Yeskey, 524 U.S. 206, 208 (1998)); 42 U.S.C. § 12132 (emphasis added).

124. *See, e.g., id.*, at *12–*13.

125. Most antidiscrimination employment statutes do not apply to prison labor, including Title I of the ADA, because incarcerated individuals are not considered "employees" under those statutes. *See, e.g.,* Wolfe v. Ohio Dep't of Rehab. & Corr., No. 2007-08902, 2009-Ohio-7052, at *P4 (Ohio Ct. Cl. Dec. 10, 2009); Castle v. Eurofresh, Inc., 731 F.3d 901, 908 (9th Cir. 2013); Murdock v. Washington, 193 F.3d 510, 512 (7th Cir. 1999); Cox v. Jackson, 579 F. Supp. 2d 831, 850 (E.D. Mich. 2008); Battle v. Minn. Dep't of Corr., 40 Fed. Appx. 308, 310 (8th Cir. 2002); Hale v. Arizona, 993 F.2d 1387, 1395 (9th Cir. 1993).

126. *Wolfe*, 2009-Ohio-7052, at *P4.

127. *Id.* at *P6.

128. *Id.*

129. *Id.*

130. *Wolfe*, 2009-Ohio-7052, at *P7.

131. *Id.*

too challenging with his disability.[132] The court found for the ODRC, noting that it is "well-established that ordinary prison labor performed by an inmate in a state correctional institution facility is not predicated upon an employer-employee relationship and thus does not fall within the scope of" Title I.[133] During a subsequent hearing of the case, the court reiterated that "[b]ecause inmates are not employees, statutes designed to protect employees do not apply to inmates[;]" thus, "Title I of the ADA does not apply to inmates who work in a prison."[134] This interpretation of the ADA creates yet another gap in the judicial system, leaving incarcerated disabled people vulnerable and unprotected.

Insufficient Facts

In addition, claims that fail to allege sufficient facts to meet the required elements of a violation will be dismissed.[135] Specifically, claims are dismissed when incarcerated people (1) fail to show a qualifying disability, (2) fail to show that they were treated differently than similarly situated, non-disabled individuals, or (3) fail to show discriminatory intent. The ADA defines disability as a physical or mental condition that substantially and negatively impacts a major life activity.[136] An individual is also considered disabled under the ADA if they have a record of such a condition or are regarded by others as having such a condition.[137] *Quinn v. State* is an example of a case in which the ADA claim was dismissed because the plaintiff failed to prove that they had a qualifying disability.[138] In *Quinn*, the plaintiff was incarcerated at San Quentin State Prison in California.[139] Quinn underwent surgery for a medical condition known as

132. *See id.* at *P1–*P2 (plaintiff alleged that accommodations under the ADA would have excused him from working in the kitchen).

133. *Id.* at *P4 (quoting McElfresh v. Ohio Dep't of Rehab. & Corr., No. 04AP-177, 2004-Ohio-5545, at *1P4 (Ohio Ct. App. Oct. 19, 2004)).

134. *Wolfe*, 2011-Ohio-6825, at *P13.

135. FED. R. CIV. P. 12(b)(6); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.") (internal quotes omitted).

136. 42 U.S.C. § 12102(1).

137. Quinn v. State, No. A143679, 2017 Cal. App. Unpub. LEXIS 584, at *5 (Cal. Ct. App. Jan. 24, 2017) (relying on 42 U.S.C. § 12102(1)). A major life activity can include but is not limited to "'caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." 42 U.S.C. § 12102(2)(A). Additionally, a major life activity can include "the operation of a major bodily function. . ." such as "immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions." *Id.* at (B).

138. *Quinn*, 2017 Cal. App. Unpub. LEXIS 584, at *7.

139. *Id.* at *2.

"trigger finger release" that affected his left index finger.[140] Following the surgery, the plaintiff's physical therapist recommended that he undergo a lot of consistent physical therapy to ensure improvements in his finger's mobility.[141] Despite repeated requests from both Quinn and his physical therapist to the prison, Quinn's aggressive physical therapy treatment was delayed for two months.[142] Because of this treatment delay, even though he eventually received physical therapy, it did not improve his condition.[143]

Because Quinn failed to allege that the injury to his left index finger contributed to or resulted in a substantial limitation of any major life activities, the court held that Quinn failed to state a claim under the ADA.[144] In coming to this conclusion, the court looked to the complaint which focused entirely on not receiving sufficient follow-up care post-surgery, rather than demonstrating to the court that his finger injury resulted in a substantial limitation.[145] The court never concluded that Quinn did not have a disability, just that he did not provide the facts to prove to the court that he did, resulting in the eventual dismissal of his claim. In short, Quinn focused on the wrong information.

A case may also be dismissed when there are not sufficient facts to prove that the disabled individual was treated differently than similarly situated non-disabled individuals. *Mercado v. Department of Corrections* provides an example of such a case.[146] As discussed earlier in this Note,[147] the plaintiff in *Mercado* had his mental health diagnoses changed from bipolar disorder and ADHD to narcissistic personality disorder and antisocial personality disorder.[148] Because of these diagnostic changes, the plaintiff was deprived of the medication that he had been taking for ADHD and bipolar disorder and he was subsequently punished for engaging in behavior consistent with these conditions if left untreated.[149] The court opined that the plaintiff needed to show that he was treated in a different

140. *Id.*

141. *Id.*

142. *Id.* at *2–*3.

143. *Quinn*, 2017 Cal. App. Unpub. LEXIS 584, at *3.

144. *Id.* at *7.

145. *Id.*

146. *See* Mercado v. Dep't of Corr., No. 3:16-CV-1622, 2018 U.S. Dist. LEXIS 87681, at *35 (D. Conn. May 25, 2018).

147. *See infra* Part III(A)(2).

148. *Mercado*, 2018 U.S. Dist. LEXIS 87681, at *8, 10.

149. *Id.* at *8.

manner than incarcerated people who were exhibiting violent, self-destructive behaviors but did not have a psychiatric disability.[150]

In other words, a prospective plaintiff must demonstrate in their pleadings that they received punishment that was different than the punishment that non-disabled people in prisons would have received for similar behavior. While this is a common standard for claims involving discrimination, it is a counterintuitive standard for claims involving disabled individuals. This is because, under the ADA, disabled individuals are *supposed* to be treated differently than non-disabled individuals *because* of their disability.[151] For example, accommodations require differential treatment of disabled and non-disabled people in order to create equal access for disabled individuals.[152] However, under the standard applied in *Mercado*, the need for differential treatment (due to disability) is not considered. Notably, while this standard runs contrary to the underlying logic of the ADA, courts still require this demonstration of disparate punishment for a claim to succeed.

Though it is challenging, these cases are not impossible to prevail on. Incarcerated persons can win these types of cases if the pleadings demonstrate that the plaintiff had a disability and the defendant violated their rights with discriminatory intent.[153] To establish discriminatory intent, a plaintiff must "show that the defendant *knew* that harm to a federally protected right was substantially likely and *failed* to act on that likelihood."[154] Examples of conduct that meet this "exacting standard" include having knowledge of an incarcerated person's serious medical need yet failing or refusing to provide healthcare, or delaying treatment for reasons that are not medically-related.[155]

Although many cases are dismissed for failing to meet this standard, *Morrison v. Florida Department of Corrections* is a unique example of a claim under the ADA that does allege sufficient facts to defeat summary judgment.[156] In *Morrison*, the plaintiff was incarcerated within the Florida Department of Corrections (FDC) system and was housed in multiple

150. *Id.* at *35 (quoting Atkins v. County of Orange, 251 F. Supp. 2d 1225, 1232 (S.D.N.Y. 2003)).

151. *See* 42 U.S.C. § 12101(b)(1).

152. James Leonard, *The Equality Trap: How Reliance on Traditional Civil Rights Concepts Has Rendered Title I of the ADA Ineffective*, 56 CASE W. RSRV. 1, 30 (2005).

153. *See* Morrison v. Fla. Dep't of Corr., No. 4:18cv576-MW/CAS, 2020 U.S. Dist. LEXIS 269531, at *16–*17 (N.D. Fla. Feb. 22, 2020).

154. *Id.* at *17 (quoting McCullum v. Orlando Reg'l Healthcare Sys., Inc., 768 F.3d 1135, 1146–47 (11th Cir. 2014)) (emphasis in original).

155. *Id.* (quoting Keohane v. Jones, 328 F. Supp. 3d 1288, 1314 (N.D. Fla. 2018)).

156. *Id.*

facilities owned and operated by GEO Group.[157] During his initial health screening, Morrison informed FDC medical staff that he had contracted hepatitis C virus (HCV) when he was eighteen years old.[158] Because of his HCV, the medical staff monitored Morrison's condition with regular blood testing.[159] Through this regular testing, FDC medical staff discovered that Morrison's blood platelet counts were significantly lower than they should be.[160] The normal level for blood platelet counts is 144,000/µl, but the Morrison's count varied between 86,000/µl and 48,000/µl.[161] Morrison's platelet count had been "persistently low" since 2014.[162] Due to his HCV, Morrison also developed cirrhosis, a disease of the liver.[163] An ultrasound of his liver showed that his liver and spleen were enlarged and that he had gallstones.[164] The facts discussed above occurred between 2015 and 2017, but Morrison was untreated until early 2018.[165] The court agreed that the factual allegations demonstrated that the FDC knew that Morrison had HCV and refused to provide treatment between September 2015 and March 2018.[166] The factual dispute regarding why the FDC refused to provide plaintiff with treatment led the court to hold that the claim survived the motion to dismiss.[167]

B. Specific Procedural Reasons

Procedural issues also result in claim dismissal, but many of these issues can be easily avoided. All courts and jurisdictions have unique procedural requirements that attorneys or *pro se* plaintiffs must follow to successfully plead a claim. It is vital for any prospective litigant to research and follow the procedural rules. This section does not cover all the procedural requirements. Rather, it discusses two of the most common procedural reasons that courts dismiss prison ADA claims. First, courts often dismiss incarcerated individuals' claims for "failure to exhaust" remedies under the PLRA. Second, incarcerated individuals' claims can be dismissed for mootness. Each of these issues will be discussed in more detail below.

---

157. *Morrison*, 2020 U.S. Dist. LEXIS 269531, at *2.
158. *Id.* at *3.
159. *Id.*
160. *Id.* at *4.
161. *Morrison*, 2020 U.S. Dist. LEXIS 269531, at *3.
162. *Id.* at *4.
163. *Id.*
164. *Id.*
165. *Morrison*, 2020 U.S. Dist. LEXIS 269531, at *5.
166. *Id.* at *5.
167. *Id.* at *18.

1. Failure to Exhaust under PLRA

Under the PLRA,[168] an action cannot be brought regarding prison conditions "under Section 1983 or any other federal law by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."[169] Essentially, an individual must go through all administrative processes, such as the state's prison grievance procedure, available within the prison system before they can sustain a claim in court involving prison conditions or inmate treatment.[170] The PLRA reiterates the importance of following jurisdiction-specific procedural rules,[171] but it also creates a barrier to quick relief—a barrier that must be overcome to prevent having a complaint dismissed outright.

Failure to exhaust remedies under the PLRA is an affirmative defense that can be raised by defendants in cases brought by incarcerated individuals. Defendants often raise this defense because it is an effective way to dispose of a lawsuit quickly and prevent recovery by the aggrieved individual.[172] The burden of proof rests with the defendant, meaning that the defendant must prove that the plaintiff failed to properly exhaust the available remedies.[173] In response, plaintiffs may contend that the defendant prevented them from exhausting administrative remedies, making those remedies effectively unavailable.[174] Remedies can be deemed unavailable if plaintiff is able to demonstrate that factors (such as threats from correction officers) rendered otherwise available procedures unavailable as a matter of fact.[175] A plaintiff can be excused from the PLRA exhaustion requirement "only where (1) administrative remedies

168. Prison Litigation Reform Act, Pub. L. No. 104–134 § 7, 110 Stat. 1321–66, 71–73 (1996) (codified as amended at 42 U.S.C. § 1997e (2012)).

169. Dodson v. CoreCivic, No. 3:17-cv-00048, 2018 U.S. Dist. LEXIS 171132, at *15 (M.D. Tenn. Oct. 3, 2018).

170. Woodford v. Ngo, 548 U.S. 81, 85 (2006) (laying out the grievance procedure within the California prison system).

171. *See id.*

172. 42 U.S.C. § 1997e(a) (2012). *See* Mercado v. Dep't of Corr., No. 3:16-CV-1622, 2018 U.S. Dist. LEXIS 87681, at *15 (D. Conn. May 25, 2018).

173. *Dodson*, 2018 U.S. Dist. LEXIS 171132, at *15.

174. *Id.* at *16.

175. Hubbs v. Suffolk Cnty. Sherrif's Dep't, 788 F.3d 54, 59 (2d Cir. 2015); Foulk v. Charrier, 262 F.3d 687, 698 (8th Cir. 2001) (holding that an inmate had sufficiently exhausted his available remedies under the PLRA requirement when prison officials failed to respond to his informal resolution request, thus rendering further proceedings unavailable); Abney v. McGinnis, 380 F.3d 663, 669 (2d Cir. 2004) (holding that prison officials' failure to implement prior rulings in an inmate's favor rendered administrative relief "unavailable" under the PLRA); Miller v. Norris, 247 F.3d 736, 740 (8th Cir. 2001) (holding that, where prison officials failed to respond to an inmate's request for grievance forms, remedies were not "available" and therefore the inmate was in compliance with the PLRA exhaustion requirement).

were not in fact available; (2) prison officials have forfeited, or are estopped from raising, the affirmative defense of non-exhaustion; or (3) special circumstances justify the prisoner's failure to comply with the administrative procedural requirements."[176]

2. Mootness

Mootness can also result in early dismissal of a case. A claim is moot when "the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome."[177] If a claim becomes moot at any point during the proceedings, then it is no longer a case or controversy and can no longer be decided by the federal courts.[178] A common reason that inmate claims are deemed moot is that an incarcerated plaintiff has been transferred from the facility that caused the alleged violation.[179] If a disabled plaintiff has been transferred, it is important that they consider, prior to filing a lawsuit, whether the defendant is likely to engage in the same or similar behavior towards them in the future.[180] If it appears unlikely that the same defendant could engage in the behavior again, the claim is likely moot.

One exception to the mootness requirement is for class action lawsuits. When these types of suits are involved, the mootness doctrine is flexible.[181] Even if one individual's claim becomes moot, this will not prevent the case from being heard by the federal court if other class members' claims remain live.[182] However, if the named plaintiff's claim becomes moot *before* the class is certified, dismissal is ordinarily required.[183] As follows, there are three exceptions this rule.[184]

176. *Mercado*, 2018 U.S. Dist. LEXIS 87681, at *15.

177. *Dodson*, 2018 U.S. Dist. LEXIS 171132, at *7.

178. Already, LLC v. Nike, Inc., 568 U.S. 85, 90–91 (2013) ("We have repeatedly held that an 'actual controversy' must exist not only 'at the time the complaint is filed,' but through 'all stages' of the litigation." (quoting Alvarez v. Smith, 558 U.S. 87, 92 (2009)).

179. *See, e.g.,* Owens v. Isaac, 487 F.3d 561, 564 (8th Cir. 2007); Bacote v. Fed. Bureau of Prisons, 94 F.4th 1162, 1162 (10th Cir. 2024); Jordan v. Sosa, 654 F.3d 1012, 1027 (10th Cir. 2011); Herman v. Holiday, 238 F.3d 660, 665 (5th Cir. 2001); Cooper v. Sherriff, Lubbock Cnty, 1078, 1084 (5th Cir. 1991); Hernandez v. Garrison, 916 F.2d 291, 293 (5th Cir. 1990).

180. Tyler B. Lindley, *The Constitutional Model of Mootness*, 48 BYU L. REV. 2151, 2158 (2023).

181. Wilson v. Gordon, 822 F.3d 934, 942 (6th Cir. 2016). *See also* Lindley, *supra* note 180 at 2158.

182. *Id.*

183. *See* Dodson v. CoreCivic, No. 3:17-cv-00048, 2018 U.S. Dist. LEXIS 171132, at *8 (M.D. Tenn. Oct. 3, 2018) (describing this rule).

184. *See id.*

The first exception is for claims that are capable of repetition, yet evading review.[185] This doctrine applies when the named plaintiff provides sufficient evidence to show that the illegality will likely occur again.[186] To use this exception, the following two circumstances must be simultaneously present: "(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again."[187]

The second exception is called the "picking off" exception.[188] This applies in situations where the defendant strategically offers named plaintiffs money to cover the entirety of their individual claims, so that their claims become moot, and the case is eliminated before class certification.[189] This exception was created to stop defendants from strategically providing full relief to named plaintiffs in order to evade judicial review.[190]

The third, and final, exception to the mootness doctrine is the "inherently transitory" exception.[191] For a plaintiff to use this exception, two conditions must be met.[192] First, the named plaintiff's claim was likely to become moot before the court could rule on class certification.[193] Second, other potential class members' injuries are ongoing, which keeps all the claims alive.[194] If these two conditions are met, a plaintiff may be able to overcome a finding of mootness.

Mootness is a tough barrier to overcome because plaintiffs often have little control over whether their claim has become moot. However, knowing the circumstances where the mootness doctrine does or does not apply is important for incarcerated plaintiffs seeking to bring a claim.

---

185. *See id.*

186. Weinstein v. Bradford, 423 U.S. 147, 149 (1975) (per curiam).

187. Spencer v. Kemna, 523 U.S. 1, 17 (1998).

188. *See* Johnathan Lott, *Moot Suit Riot: An Alternative View of Plaintiff Pick-off in Class Actions*, 1 U. CHI. LEGAL. FORUM 531, 534 (2013) (describing how defendants may moot a case by picking off the plaintiffs).

189. Campbell-Ewald Co. v. Gomez, 577 U.S. 153 (2015) (eliminating—for the most part—defendant's ability to pay off named plaintiffs before the class action is certified).

190. William B. Rubenstein, *Newberg on Class Actions* § 2:15 (Thomson Reuters 5th ed. 2012) ("[T]he defendant may effectively prevent judicial review by "picking off" named plaintiffs before the court can rule on, or even before plaintiffs can make, a motion for class certification.").

191. United States Parole Comm'n v. Geraghty, 445 U.S. 388, 399 (1980).

192. Dodson v. CoreCivic, No. 3:17-cv-00048, 2018 U.S. Dist. LEXIS 171132, at *12 (M.D. Tenn. Oct. 3, 2018).

193. *Id.* at *13.

194. *Id.*

Having this information will help plaintiffs know when and how to bring claims that will avoid or overcome a finding of mootness.

IV. HOW TO MAKE A CLAIM THAT IS LIKELY TO SURVIVE

While many incarcerated individuals' ADA claims are dismissed, there are strategies that can be used to increase the chances that a claim will survive a motion to dismiss or succeed at summary judgment. First, potential litigants must understand what is required to state a claim and ensure that the facts of their situation are sufficient. Second, litigants must understand the relevant law and how the courts interpret it, including procedural requirements. Third, and finally, litigants must properly plead their claim. Each of these steps will be discussed in more detail below.

A. The Facts

While understanding the relevant law is the most important part of making a successful claim, it can be helpful for an incarcerated person who is considering bringing a claim to first spend time gathering as much evidence as possible of the potential violation. [195] Understanding the specifics of their prospective case will help a potential litigant to draw analogies between their case and successful cases, bolstering their claim when it is time to file the complaint. As discussed above, sometimes claims are dismissed because the alleged facts do not meet the elements or standards of the alleged violation. Some claims are dismissed because they are deemed not a cognizable legal theory—this can also be a factual issue, such as the claims that are dismissed for involving medical or labor issues.[196] Sometimes these issues are unavoidable because the circumstances of the claim simply do not meet the legal standards. This is why it is vital to both understand what the law requires *and* whether the potential plaintiff's factual circumstances meet those requirements. Again, this is why it can be extremely helpful to ensure that a potential plaintiff understands exactly what factual allegations they are going to be making prior to diving into the legal research.

B. The Law

Understanding the relevant law is the most important factor in making a successful claim. This section cannot possibly cover all of the potentially relevant law, but it will discuss the most common areas of law

195. *See generally* Matthews v. Pa. Dep't of Corr., 613 Fed. App'x. 163, 169 (3d Cir. 2015) (dismissing an inmate's ADA claim for failure to state a claim upon which relief can be granted on the facts alleged in the inmate's complaint).

196. *See id.*

that may come up in a lawsuit of this kind. First, this section will address the requirements to state a claim under 12(b)(6). Second, this section will discuss the ADA, including the obligations imposed by the law and important definitions for understanding ADA standards. Third, this section will discuss specific requirements of Title II. Fourth, and finally, this section will discuss specific requirements of Title III.

1. Federal Rule of Civil Procedure 12(b)(6)

Simply put, a 12(b)(6) motion is a motion to dismiss for failure to state a claim upon which relief can be granted.[197] As demonstrated by the cases discussed in Part III(A) of this Note, this is one of the most common reasons that claims are dismissed. It is extremely common for defendants to raise a 12(b)(6) motion as a defense in response to a claim being brought against them, so it is important for plaintiffs to understand what is required to survive a motion of this type.

When a motion to dismiss is filed, the court must accept all the pled facts as true to determine whether the complaint is plausible on its face.[198] The complaint will be considered facially plausible when the plaintiff provides enough facts for the court to draw a reasonable inference of the defendant's liability for the alleged misconduct.[199] A 12(b)(6) motion is not meant to be a substantial hurdle for plaintiffs, but is intended to weed out frivolous, unsupported claims—those that are merely conclusions, and those that just recite the elements of the legal claim.[200] Instead, the court seeks factual allegations that sufficiently support the elements of a legal claim.[201] When these are present, a court must "assume their veracity and then determine whether they plausibly give rise to an entitlement to relief."[202]

To survive a 12(b)(6) motion to dismiss, an incarcerated disabled plaintiff must sufficiently allege facts that enable a court to identify a potential violation of the law. *Herschberger v. Lumpkin* provides an example of a claim that survived a 12(b)(6) motion to dismiss.[203] In *Herschberger*, the plaintiff was incarcerated in the Estelle Unit in Texas.[204] The plaintiff was blind in one eye and had a hearing disability.[205] While at

197. FED. R. CIV. P. 12(b)(6).

198. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

199. *Id.*

200. *Id.* at 68.

201. *Id.* at 664.

202. *Iqbal*, 556 U.S. at 664.

203. Herschberger v. Lumpkin, Civ. No. H-18-2550, 2022 U.S. Dist. LEXIS 172794, at *11 (S.D. Tex. Sept. 21, 2022).

204. *Id.* at *2.

205. *Id.*

Estelle, plaintiff's finger was trapped in his cell door and his fingertip was severed after a prison employee closed the cell doors without first ensuring the doorways were cleared or verbally announcing that the doors were going to close.[206] Prison employees were required by the facility's policies to announce the movement of doors.[207] The plaintiff alleged "that he was adversely treated by reason of his disability when the defendants failed to provide verbal warnings" or ensure the doorways were cleared before closing the doors.[208] The court found that the plaintiff pled sufficiently to avoid dismissal on 12(b)(6) grounds.[209]

It is vital that claims make it past the motion to dismiss stage, not only for the sake of the incarcerated individual who brought the claim, but also for the sake of prison oversight. The courts are meant to play an important role in oversight of the ADA in prisons, but this role is hindered when claims are dismissed. If more claims survived, more precedent would be available for subsequent courts to rely on, and more information would be available to the public. Access to information about the treatment of disabled individuals in prison would enable future policy makers, lawyers, law students, and others to engage in more effective advocacy and research. This information would also provide incarcerated individuals with the tools necessary to bring a strong and well-pled claim.

2. Americans with Disabilities Act

The ADA contains both obligations and prohibitions regarding the treatment of disabled individuals.[210] Though the ADA is split into various Titles, there are a handful of important definitions and requirements that apply to all of the different sections. Understanding these obligations, definitions, and requirements is vital for making a successful ADA claim.

Obligations

Unlike most other antidiscrimination statutes, the ADA imposes an affirmative obligation on employers, public entities, and places of public accommodation to make their programs and businesses accessible for qualified individuals with disabilities.[211] Regulations created by the Attorney General with relation to the application of the ADA state that covered entities must make "reasonable modifications" to their policies,

206. *Id.*

207. *Herschberger*, 2022 U.S. Dist. LEXIS 172794, at *12, *21.

208. *Id.* at *11.

209. *Id.* at *11–12.

210. *See generally* Nair, *supra* note 5.

211. Reaves v. Dep't of Corr., 195 F. Supp. 3d 383, 419 (D. Mass. 2016) (quoting Toledo v. Sanchez, 454 F.3d 24, 32 (1st Cir. 2006)).

practices, or procedures when modification is necessary to avoid discrimination on the basis of disability.[212] In fact, under the ADA, failure to accommodate an individual's disability qualifies as prohibited discrimination.[213] Entities are required to provide reasonable accommodations in order to ensure that disabled individuals "receive meaningful access" to their services, programs, or activities.[214] A proposed accommodation is considered a reasonable accommodation when it allows a disabled individual to obtain access that they otherwise would not have because of their disability.[215]

As a covered entity, prisons are also required to provide reasonable accommodations to disabled individuals.[216] Disabled people often face substantial barriers to getting accommodations and even face retaliation from prison staff when they request accommodations or report lack of accommodations.[217] *Armstrong v. Newsom* provides helpful precedent for demonstrating how important it is to hold prison staff accountable for their failure to accommodate disabled individuals.[218] The claims brought in *Newsom* are part of a decades-long class action suit against the California Department of Correction and Rehabilitation (CDCR).[219] In 2018, the state of California sent a "strike team" to investigate reports of staff misconduct at the facility with the most class members residing in a single facility and the second largest population of disabled inmates in the state.[220] Following the investigation, one member of the strike team wrote:

> I have never heard accusations like these in all my years. Many of the inmates have expressed fear of what will happen to them tomorrow when the team is not there. This is a very serious situation and needs immediate attention. If there is any means of installing cameras immediately, I would strongly suggest it.[221]

212. Modifications are not required where they would "fundamentally alter" the nature of the service, program, or activity. 28 C.F.R. § 35.130(b)(7).

213. Windham v. Harris Cnty, 875 F.3d 229, 235 (5th Cir. 2017).

214. 28 C.F.R. § 35.130(b)(7).

215. Wis. Cmty. Servs., Inc. v. City of Milwaukee, 465 F.3d 737, 754 (7th Cir. 2006).

216. *See id.*

217. *See* Armstrong v. Newsom, 58 F.4th 1283, 1295 (9th Cir. 2023) (referencing an expert's findings that some prisons have a "vicious cycle" of failing to accommodate disabled inmates and retaliating against inmates who report the failure to accommodate, thereby disincentivizing these inmates from "speaking up" and resulting in "less opportunity to hold officers accountable").

218. *Id.*

219. *Id.* at 1288–89.

220. *Id.* at 1289.

221. *Newsom*, 58 F.4th at 1289.

The court was disturbed by the results of the investigation, and even more upset by the lack of accountability for prison officials who failed to accommodate incarcerated disabled individuals or retaliated against them for making requests or reports.[222] In the opinion, the court points out that "retaliating against inmates who request accommodations or who report denials of accommodations deters inmates form pursuing accommodations in the first place."[223] The court continues, saying:

> If prison staff are not held accountable when they unlawfully fail to accommodate disabled inmates—or when they retaliate against inmates who report such misconduct—disabled inmates will stop speaking up. And if prisoners do not speak up, there is less opportunity to hold officers accountable. Failing to hold officers accountable, in turn, can embolden staff by suggesting that they can violate inmates' rights with impunity—further discouraging disabled inmates from speaking up, as the threat of retaliation grows.[224]

In writing the *Newsom* opinion, the Ninth Circuit sets an example for other courts in strongly defending the rights of disabled inmates. While it is still difficult to bring an ADA claim as an incarcerated individual, it is helpful to remember that there are courts willing to recognize and protect the rights of disabled individuals.

Definitions & Requirements

The most important definition the ADA provides is the definition of disability. As discussed earlier in this Note, the ADA defines a disability as "a physical or mental impairment that substantially limits one or more of the major life activities[.]"[225] Courts have held that the definition of disability should be broadly construed, allowing coverage to the maximum extent permitted.[226] The ADA and the courts interpreting it have elaborated on the definition of major life activities. Major life activities include performing manual tasks, working, seeing, eating, walking, speaking, breathing, hearing, learning, concentrating, and much more.[227] Major life activities also include major bodily functions, extending

222. *Id.* at 1293.

223. *Id.*

224. *Id.* at 1295.

225. Washington v. Corr. Med. Servs, Civ. No. 05-3715, 2006 U.S. Dist. LEXIS 25127, at *6 (D.N.J. Apr. 28, 2006).

226. 42 U.S.C. § 12102(4)(A); 28 C.F.R. §35.108(a)(2)(i).

227. Other major life activities include, but are not limited to, caring for oneself, walking, reading, thinking, communicating. 42 U.S.C. § 12102(2)(A).

coverage to those with chronic health issues.[228] Major life activities is an intentionally expansive category, and is not meant to be interpreted narrowly or to create too demanding of a standard.[229]

The next step of the ADA analysis is whether an individual's physical or mental impairment is substantially limiting. Like the definition of major life activities, the determination of whether an impairment is substantially limiting should not involve demanding or extensive analysis.[230] *Matthews v. Pennsylvania Department of Corrections* shows how courts expansively define substantially limiting impairments.[231] In *Matthews*, the plaintiff was an incarcerated individual who suffered from Achilles tendonitis. [232] Plaintiff's Achilles tendonitis caused him to struggle with using the stairs and climbing up to the top bunk, where he was assigned to sleep.[233] Matthews made requests to be moved to a lower bunk, but nothing came of those requests.[234] His inability to use the stairs led to limited access to various programs and services, and caused him to miss a mandatory inmate count.[235] In determining whether Matthews's impairment was substantially limiting, the court stated that an impairment does not need to prevent or significantly restrict the individual from performing a major life activity in order to be deemed substantially limiting.[236] The most important consideration when determining whether an impairment is substantially limiting is the effect the impairment has on the life of the individual.[237] In *Matthews*, the court determined that the plaintiff's impairment was considered substantially limiting.[238]

Another important feature of the ADA is the "most integrated setting" requirement.[239] Under the ADA, public entities (including prison facilities) must administer their programs, services, and activities in the most integrated setting appropriate, considering the needs of qualified individuals with disabilities.[240] An integrated setting is one that allows disabled individuals to interact with non-disabled individuals to the fullest

228. Major bodily functions include, but are not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. 42 U.S.C. § 12102(2)(B).

229. 28 C.F.R. § 35.108(c)(2)(i).

230. 28 C.F.R. § 35.108(d)(ii).

231. *See* Matthews v. Pa. Dep't of Corr., 613 Fed. App'x. 163, 167 (3d Cir. 2015).

232. *Id.* at 165.

233. *Id.*

234. *Id.*

235. *Matthews*, 613 F. App'x at 166.

236. *Id.* at 167.

237. *Id.* (quoting Albertson's Inc. v. Kirkingburg, 527 U.S. 555, 566 (1999)).

238. *See id.* at 168.

239. 28 C.F.R. § 35.130(d).

240. *Id.*

extent possible.[241] This requirement ensures that entities cannot unjustifiably segregate disabled individuals.[242] *Reaves v. Department of Corrections* demonstrates an extreme example of a prison failing to comply with this requirement.[243]

In *Reaves*, the plaintiff was a quadriplegic inmate serving a life sentence without possibility for parole in Massachusetts.[244] At the time of the case, Reaves had been incarcerated for twenty years.[245] For seventeen of those years, Reaves was unable to use a wheelchair and had been confined to his bed.[246] During his two decades of incarceration, plaintiff's condition "significantly deteriorated."[247] Reaves' hip and knee joints had become frozen and could no longer be bent to sit in a wheelchair.[248] His elbows couldn't be unlocked from a bent position and he was unable to open his hands and fingers from clenched fists.[249] The court noted that, while all prisoners relinquish control over their daily lives, most are able to retain agency over their bodies for purposes of essential human activities.[250] Unlike most other incarcerated individuals, Reaves had no physical agency.[251] Reaves depended on medical staff for every part of his life, requiring assistance to be fed, bathed, and changed. He even needed assistance to hear, since his locked hands were unable to work his hearing aids.[252] Further, due to his condition, he was unable to socialize within the facility or take part in prison programming.[253] Most horrifying of all, it had been seventeen years since Reaves was allowed to go outside.[254] Reaves's only human interaction was with the medical and correctional staff, whom he did not trust.[255]

A violation of the most integrated setting requirement is one of many violations exemplified in this case. Despite repeated requests, the

241. 28 C.F.R. § 35, app. B.

242. Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581, 607 (1999) ("[U]njustified institutional isolation of persons with disabilities is a form of discrimination. . ."). *Cf.* Allen v. Wright, 468 U.S. 737, 755 (1984) ("There can be no doubt that [stigmatizing injury often caused by racial discrimination] is one of the most serious consequences of discriminatory government action.").

243. Reaves v. Dep't of Corr., 195 F. Supp. 3d 383, 419 (D. Mass. 2016).

244. *Id.* at 390–91.

245. *Id.* at 391.

246. *Id.*

247. *Reaves*, 195 F. Supp. at 392.

248. *Id.*

249. *Id.*

250. *Id.* at 415.

251. *Reaves*, 195 F. Supp. at 415.

252. *Id.*

253. *Id.*

254. *Id.*

255. *Reaves*, 195 F. Supp. at 415.

defendants failed to make any significant effort to accommodate Reaves's request for socialization.[256] The defendants mistakenly relied on the precept that any deviation from the prison's standard procedures constituted an unreasonable hardship.[257] The court rejected defendants' claim, stating that their viewpoint was at odds with the very concept of reasonable accommodation.[258] Reaves was continuously "denied the ability to smell fresh air and feel sunlight on his face," solely by reason of his quadriplegia.[259] The court found the defendant's complacency with Reaves's situation to be "perplexing at best."[260] Further, the court found that by being denied access to socialization and outdoor recreation, Reaves was "denied access to an experience that is fundamental to what it means to be human."[261] This case demonstrates why the most integrated setting requirement is so important.

Finally, it is important to understand what is considered a "benefit" of a "service, program, or activity" under the ADA.[262] States have tried to avoid ADA liability for conduct occurring in prisons by claiming "that state prisons do not provide prisoners with 'benefits' of 'programs, services, or activities' as those terms are ordinarily understood."[263] Following the Supreme Court's reasoning in *Yeskey*, the Ninth Circuit has affirmed that prisons' duties do not end with simply incarcerating individuals—they also have a duty "to provide such individuals with various positive opportunities."[264] Those positive opportunities include educational and treatment programs, opportunities to contest their incarceration, sustenance, access to toilets and bathing facilities, and communication.[265] Because prisons are tasked with providing those benefits, prisons "come under the purview of the ADA and its regulations."[266] Thus, while no one would view incarceration as a benefit, disabled individuals who are incarcerated cannot be excluded by reason of their disability from the few benefits and services provided in prison.

256. *Id.* at 423.

257. *Id.*

258. *Id.*

259. *Reaves*, 195 F. Supp. at 421.

260. *Id.*

261. *Id.*

262. 42 U.S.C. § 12132.

263. Armstrong v. Schwarzenegger, 622 F.3d 1058, 1068 (9th Cir. 2010) (quoting Pa. Dep't of Corrs. v. Yeskey, 524 U.S. 206, 210 (1998)).

264. *Id.*

265. *Id.*

266. *Id.*

3. Title II

Because Title II is discussed earlier in this Note, this section will simply provide a brief example of a claim that meets the basic requirements of a Title II claim. To establish a violation under Title II, a plaintiff must show that he is (1) a qualified individual with a disability who is (2) subject to discrimination by a public entity (3) because of his disability.[267] *Washington v. Correctional Medical Services* is a case involving a plaintiff who had multiple sclerosis and difficulty walking without crutches.[268] Plaintiff alleged that "prison officials took away his crutches in the prison library, and also at a prison banquet event."[269] Given that 12(b)(6) requires courts to take factual allegations as true, the court in *Washington* determined that the plaintiff had sufficiently alleged a Title II violation to survive a motion for summary judgment.[270]

Finally, under the correct circumstances, Title II abrogates state sovereign immunity.[271] State sovereign immunity means that a state cannot be sued in federal and state court without its consent.[272] If a claim violates Title II and "independently violate[s]" a provision of the Constitution, such as the Fourteenth Amendment, the claim abrogates state sovereign immunity—meaning that the state can now be sued without its consent.[273]

4. Title III

Title III of the ADA applies to places of public accommodation.[274] Specifically, Title III prohibits "discriminat[ion] on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation."[275] However, "[u]nlike Title II of the ADA, Title III of the ADA covers certain private entities."[276] In *Bernard v. Illinois Department of Corrections*, an Illinois District Court affirmed that "[a] private entity is considered to offer public accommodations 'if the

267. Washington v. Corr. Med. Servs, Civ. No. 05-3715, 2006 U.S. Dist. LEXIS 25127, at *6 (D.N.J. Apr. 28, 2006) (citing 42 U.S.C. § 12132).

268. *Id.* at *7.

269. *Id.*

270. *Id.*

271. Morris v. Kingston, 368 F. App'x 686, 689 (7th Cir. 2010).

272. *Sovereign Immunity*, CORNELL L. SCHOOL LEGAL INFO. INST., https://www.law.cornell.edu/wex/sovereign_immunity [https://perma.cc/6RDB-J6YV].

273. *See Morris*, 368 F. App'x at 689.

274. 42 U.S.C. § 12182(a).

275. *Id.*

276. Bernard v. Ill. Dep't of Corr., No. 3:20-cv-50412, 2022 U.S. Dist. LEXIS 215484, at *12 (N.D. Ill. Nov. 30, 2022) (citing 42 U.S.C. § 12182(a)).

operations of such entities' . . . affects commerce."[277] That case provides an example of a private entity deemed covered under Title III.[278] In *Bernard*, the plaintiff was "unable to walk, stand, sit up on his own, or perform basic tasks like eating, bathing, and toileting."[279] Plaintiff relied on a "Hoyer Lift" to get in and out of bed, chairs, and the bathtub.[280] Plaintiff also relied on a "geriatric chair," which allowed him to remain in a reclined position while staff transported him throughout the facility.[281] However, because the lift and chair were both in unsuitable condition, the plaintiff had fallen out of both on multiple occasions, causing him additional pain and injury.[282] In addition to suing the Illinois DOC (IDOC), plaintiff also brought a claim against Wexford, a company that provides medical care to inmates.[283] In his complaint, plaintiff alleged that Wexford contracted with the IDOC to provide medical care in IDOC prisons.[284] The court determined that that claim was sufficient to allege that Wexford is a private entity that offers public accommodations.[285] *Bernard* confirms that disabled individuals incarcerated in private prisons or receiving private care in prison are no less protected by the ADA than those incarcerated in public prisons.

C. The Pleading

After gathering factual information about a claim and researching the relevant law, a pleading must be drafted. At this stage, attorneys or *pro se* plaintiffs must be sure they are following proper state and federal procedure(s). Additionally, incarcerated individuals must ensure they follow the PLRA, i.e., they have exhausted all administrative remedies available within the prison system.[286] If an individual was prevented from exhausting the available remedies, this should be alleged in the pleading.[287]

Incarcerated individuals must also be sure they are suing the correct entity; this is an integral part of a successful pleading. Failure to do so could cause delay or result in early dismissal of the claim. Based on current interpretations of the law, this means suing the state or the Department of

277. *Id.* at *12 (citing 42 U.S.C. § 12181(7)(F)).
278. *Id.* at *14.
279. *Id.* at *3.
280. *Bernard*, 2022 U.S. Dist. LEXIS 215484, at *3.
281. *Id.*
282. *Id.*
283. *Id.* at *13.
284. *Bernard*, 2022 U.S. Dist. LEXIS 215484, at *13.
285. *Id.* at *13–*14.
286. *See infra* Part III(B)(1).
287. *Id.*

Correction, rather than a private entity.[288] If the claim is brought against a private entity under Title II, it will most likely be dismissed under current caselaw and judicial interpretation. States, however, cannot outsource their legal obligations and liability under federal law to a third-party to perform the same or similar functions to what is required of the state. In response to a state's attempt to outsource liability, the Ninth Circuit emphasized that "the rights of individuals are not so ethereal nor so easily avoided."[289] States are obligated to follow the ADA regardless of where they choose to incarcerate people.[290] Whether an inmate is held in a private or public prison, the state Department of Corrections will typically be a responsible entity that can be sued; it would be contrary to the ADA to allow only a portion of the disabled prison population to be covered under federal law.[291]

When pleading a failure to accommodate claim, it is important to note that the burden falls on the plaintiff to request the accommodation.[292] A plaintiff must show that they specifically identified the covered disability and the limitations caused by the disability and that they used direct and specific terms to request an accommodation.[293] A plaintiff who failed to request an accommodation in this manner can still prevail so long as they can show that "the disability, resulting limitation, and necessary reasonable accommodation" were "'open, obvious, and apparent' to the entity's relevant agents."[294]

Finally, when making a pleading, a plaintiff should consider making multiple claims or suing multiple parties. Most of the cases previously discussed raised multiple claims against multiple defendants, arising from the same set of facts. This is helpful because, even if one claim against one defendant is dismissed, other claims against other defendants can still succeed. Claims commonly made in addition to a Title II claim are Rehabilitation Act claims, Eighth Amendment claims, and negligence

288. Johnson v. Bryson, No. 5:16-CV-453-TES-MSH, 2019 U.S. Dist. LEXIS 224413, at *49 (M.D. Ga. Oct. 29, 2019) (citing *Edison*, 604 F.3d at 1310). In the alternative, inmates could sue private providers directly under Title III. The form of such pleadings is outside the scope of this Note. *See* 42 U.S.C. § 12181; *The Americans with Disabilities Act Accessibility Guidelines*, ADA TITLE III TECHNICAL ASSISTANCE MANUAL § III-7.0000, https://www.ada.gov/resources/title-iii-manual/ [https://perma.cc/U2S6-VRPM] ("[W]here public and private entities act jointly, the public entity must ensure that the relevant requirements of title II are met; and the private entity must ensure compliance with title III.").

289. Armstrong v. Schwarzenegger, 622 F.3d 1058, 1074 (9th Cir. 2010)

290. *Id.* at 1072.

291. *See id.*

292. Smith v. Harris County, No. H-15-2226, 2019 U.S. Dist. LEXIS 237989, at *12–*13 (S.D. Tex. Feb. 25, 2019) (citing Windham v. Harris Cty., 875 F.3d 229, 237 (5th Cir. 2017)).

293. *Id.*

294. *Id.* at *13.

claims. Because each claim has different requirements, making multiple claims increases the likelihood that a case survives a motion to dismiss. Additionally, if a claim violates both Title II and another constitutional right, state sovereign immunity is automatically abrogated, therefore the plaintiff will have less of an uphill battle to fight.[295] For these reasons, it is worth considering making multiple claims and suing multiple defendants.

CONCLUSION

At the time of its creation, the ADA was unique and groundbreaking legislation.[296] The affirmative obligations and collective responsibilities imposed by the ADA made it distinguishable from other antidiscrimination statutes.[297] The ADA is meant to offer broad protection for disabled individuals, including those in prison. However, the judicial system has significantly narrowed the scope of the ADA, hindering its ability to be as effective as Congress intended it to be. The ADA has been described as being "haunted by a mismatch" between its own guidelines on one hand and institutional norms on the other.[298] This mismatch has created many barriers for disabled individuals who seek to bring ADA claims while incarcerated. Despite the challenges, there are steps—discussed in this Note—that disabled individuals can take to ensure their claims are successful.

However, though this Note primarily focuses on actions that incarcerated individuals can take, the onus for addressing these problems does not—and should never—rest solely with the impacted individuals. As members of society, we all have the power to increase awareness of these issues and the responsibility to address them. One way that we can do this is by advocating for—and with—our local Protection & Advocacy (P&A) organizations.

The federal government mandates that each state participate in the P&A System, the largest provider of legal advocacy services for people with disabilities.[299] The National Disability Rights Network functions as the nonprofit membership organization for P&A organizations.[300] These organizations play an important role in monitoring ADA compliance, and

295. *See infra* Part IV(B)(3).

296. *See* Anita Bernstein, *Lawyers with Disabilities: L'Handicape C'est Nous*, 69 U. PITT. L. REV. 389, 389 (2008).

297. Nair, *supra* note 5, at 802.

298. *Id.*

299. National Disability Rights Network, *About*, *NDRN Member Agencies*, https://www.ndrn.org/about/ndrn-member-agencies/ [https://perma.cc/3YXD-WAQD].

300. *Id.*

even have "broad access authority" to monitor inside private and state prisons.[301] However, these organizations have limited funds and monitoring ADA compliance inside prisons would take more resources than they have to offer.[302] As disability rights advocates, it is important that we advocate for increased funding for the P&A system. These organizations have the power to combat one of the largest obstacles to public oversight of ADA compliance in prisons—the lack of transparency—and could do so if they had the resources. By increasing funding for P&A organizations, we would be able to focus on utilizing existing tools rather than building something new and, most importantly, fewer incarcerated individuals would be forced to proceed *pro se*.

Additionally, we can support P&As by getting involved with our local organizations. Your local organization's website will show you ways that you can take action.[303] Regardless of physical or financial means, everyone can get involved and advocate for equality and accessibility. We all have the power to help disabled individuals carry the burden of enforcing and protecting their rights under the ADA while incarcerated. Disabled individuals in prison deserve change in the judicial system, *and* they deserve tools for navigating the system that we currently have. We can use our voices and actions to ensure that the rights of disabled individuals are respected—regardless of incarceration status.

301. Email Correspondence with Tim Gardner, Director of Legal Services at Disability Rights New Mexico (June 28, 2023, 2:50 PM).

302. *See id.*

303. Ways to take action can include donating, volunteering, voting, advocating, or even applying to work for your local P&A.