UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No.24-1710

WILLIAM MURPHY, individually and as guardian ad litem on behalf of A.T. and K.M.; and TANISHA MURPHY,

Plaintiffs / Appellants,

v.

STATE OF DELAWARE, JUSTICES OF THE PEACE; THE HONORABLE ALAN DAVIS, in his official capacity only as Chief Magistrate of the Justices of the Peace; CONSTABLE JAMAN BRISON, individually and in his official capacity as a Constable of the Justices of the Peace; CONSTABLE HUGH CRAIG, individually and in his official capacity as a Constable of the Justices of the Peace; and CONSTABLE GERARDO HERNANDEZ, individually and in his official capacity as a Constable of the Justices of the Peace,

Defendants / Appellees.

BRIEF OF APPELLANTS

On Appeal from the
United States District Court for the
District of Delaware
(Civil Action No. 21-415-CFC)

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STATEMENT OF JURISDICTION

The District Court had federal question jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3) and (4), 28 U.S.C. §§ 2201 and 2202, 42 U.S.C. § 12202, 42 U.S.C. § 2000d-7, 42 U.S.C. § 12133, and 29 U.S.C. § 794a. This Court has appellate jurisdiction from a final decision under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Did the District Court err in holding that the causation element of a *prima facie* case of disability discrimination under the ADA[1] was not satisfied by Defendants' failure to make any reasonable accommodation whatsoever - including a lack of notice in braille - before evicting the blind Plaintiff and his family from their Home? (JA12-15; D.I. 33 at 5-8).

2. Did the District Court err in holding the individual Defendants were entitled to quasi-judicial immunity despite actual knowledge: they were evicting the wrong family from their Home; and the family had not received either traditional or ADA compliant prior notice? (JA21-24; D.I. 33 at 19-21).

3. If yes, did Defendants' eviction of Plaintiffs from their Home despite neither prior notice to nor personal jurisdiction over them violate Fourteenth

[1] All references herein to the "ADA" should be understood to refer to both Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

Amendment procedural due process? (D.I. 33 at 14-16,7,18-19).

4. Also if yes, was it objectively unreasonable under the Fourth Amendment to seize Plaintiffs' Home despite actual knowledge by Defendants that they were evicting the wrong family, a family which lacked any notice of the eviction? (D.I. 33 at 16-18).

RELATED CASES AND PROCEEDINGS

None.

STATEMENT OF THE CASE

This case arises from the eviction of the wrong family - a blind widower and his two young children - from their Home during a snowstorm and state law eviction moratorium without: (1) prior notice; (2) opportunity to be heard; or (3) any reasonable accommodation whatsoever. After the original Complaint was filed, defense counsel produced three official internal governmental reports written by the three individual Defendants which confirmed all the material facts charged in the Complaint. These include that at the time of the eviction, the Constable Defendants had actual knowledge: (1) they were evicting the wrong family from their Home; (2) the family had no prior notice of the eviction; (3) the family had a valid lease with the landlord owner; and (4) the only adult was blind. But no accommodation (be it reasonable or otherwise) was made, the family was

thrown out onto the snow covered streets and told their only recourse was to make their way to court and sue for wrongful eviction. They were subsequently homeless and without their possessions for 13 days before being given their Home back.

The original Complaint was filed on March 23, 2021. (D.I. 1; JA29). Defendants moved to dismiss. (D.I. 20-21; JA30). After 15 months under submission, oral argument was held on December 19, 2022. (D.I. 41; JA33,31). The District Court then denied the motion as moot and granted Plaintiffs leave to amend to incorporate the above noted internal governmental reports. (See Oral Order dated December 19, 2022; JA31).

The 72-page, 425-paragraph, 20,580-word First Amended Complaint was filed on January 10, 2023. (D.I. 29; JA124). The defense again moved to dismiss. (D.I. 30-31; JA31). After 13 months under submission, on March 19, 2024, the District Court issued a Memorandum Opinion and Order (D.I. 36-37; JA3,25), dismissing the case in its entirety. The decision never mentioned the key statutory issue of "reasonable accommodations." A timely Notice of Appeal was filed on April 18, 2024. (D.I. 38; JA1).

This is the Brief of Appellants and Joint Appendix.

STATEMENT OF FACTS

A. The Parties.

1. Plaintiffs - the Murphy Family.

Plaintiff William Murphy ("William") is a blind, 52-year old, male, African-American widower. (Amd.Compl. at ¶¶ 5, 56, 101, 112-14, 127, 219-23, 106, 1-2, 16, 19-20, 22, 24, 31-32, 151, 22, 98; JA124-25,128-31,134,138-40,143,148,160). He and his eldest daughter, 30-year old Plaintiff Tanisha Murphy ("Tanisha") were co-signers on a written Lease Agreement for his rental Home in the Southbridge area of Wilmington running from November 15, 2020 until November 30, 2021. (¶¶ 34-37, 68, 227, 348, 364, Ex.A to Compl.; JA131,135, 161,179,184,197). William lived there with his two minor daughters, 11-year old K.M., a special needs student in 5th grade, and 17-year old A.T., a 10th grader, both of whom were attending school by Zoom due to COVID. (¶¶ 38, 41, 62, 64-65, 81-83, 91-92, 95, 97, 100, 106, 151, 229-32, 348; JA131-32,134,136-39,148,161, 179-80).[2] Delaware Social Services provided rental assistance. (¶¶ 39, 83, 27, 145, 156, 420, Ex.B to Compl.; JA130-32,136,147-48,190-92,200).

2. Current Defendants.

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[2] Although Tanisha was on the lease because the landlord would not rent to a blind person without a co-signer, she lived elsewhere in Wilmington. (¶¶ 34-37; JA131).

Defendant "Justices of the Peace" is an arm of the State of Delaware and a phrase used in Article IV, §§ 1, 29-30 of the Delaware Constitution to identify a specific system of courts. It is usually referred to - including by statute and on the Delaware Courts' own website - as the Justice of the Peace Court. (¶ 9; JA126-27). The relief sought against it varies under each legal theory. (¶¶ 10-11; JA127).

Defendant the Honorable Alan Davis is the Chief Magistrate of the Justice of the Peace Court and is sued solely in his official capacity for prospective injunctive and other relief because, by statute, he appoints and is responsible for the training of the individual Constable defendants. (¶ 12, 296; JA127,173).

Defendants Jaman Brison, Hugh Craig and Gerardo Hernandez are Justice of the Peace Constables and employees of the J.P. Court. At all times during their interactions with Plaintiffs, they were uniformed, armed, wearing badges and believed to be police officers. They are sued individually and in their official capacities. (¶¶ 13-15, 45, 89, 296-310; JA127-28,133,137,173-75).

3. Former Defendant.

The landlord who owned the Home and rented it to Plaintiffs was a defendant in the original Complaint (see D.I. 1; JA29), but after quickly settling was dismissed by the District Court (D.I. 25; JA31), prior to the filing of the First Amended Complaint. (D.I. 29; JA31,124).

B. The Unlawful Eviction and Seizure of Plaintiffs' Home Without Notice.

1. Summary.

In the middle of a snowstorm on the morning of February 11, 2021 (¶¶ 40, 5, 81, 101, 106, 136, 144, 150, 283, 348, 420; JA132,125,136,138-39,145,147-48,170,179-80,190-92), and in the midst of several state law eviction moratoriums imposed by Emergency Declaration of the Delaware Governor and by several Orders of the Justice of the Peace court system (¶¶ 165-193, 136, 233, 258-61, 368-71, 420; JA150-56,145,162,166-67,185-86,190-92), Defendants seized Plaintiffs' Home and evicted them from it. (¶¶ 5, 90, 95, 141, 148-49, 348, 414; JA125,137,146-47,179-80,189). Plaintiffs were homeless and without their possessions for 13 days. (¶¶ 406, 147, 149, 163-64, 5, 194-95; JA189,147,150, 125,157-58).

2. Introduction.

The First Amended Complaint primarily breaks the key historical factual allegations down into two categories: (1) the facts alleged in the original Complaint (see ¶¶ 40-108; JA132-39); and (2) those facts subsequently found in the three official internal reports written by the Constables that were produced by defense counsel. (See ¶¶ 110-38; JA139-46).

3. Facts Alleged in the Original Complaint.

On the morning in question, the Constable defendants came to the Murphy family Home and repeatedly announced they were "supposed to be evicting" a "Viola Wilson." (¶¶ 48-49,57-60,42-45,50,55,89-90; JA132-34,137).

a. The Constables Conclude William is Legally Blind.

Upon answering the door, the Constables quickly observed and concluded William was blind. (¶¶ 56, 219-25, 420, 51; JA134,160-61,190-92,133).

b. William Explains He Is Not Viola Wilson.

William explained he is not Viola Wilson and the Constables also admitted this. (¶¶ 57-60; JA134). Fairly pled, William also explained he had no connection whatsoever to anyone named Viola Wilson. (¶¶ 377-81; JA186).

c. Three Adults Explain This is the Murphy Family Home and That No Adult Female Lives There.

The Constables were told by three separate adults - a man named Devoughn, Josh Murphy and William - that no adult females lived there, the only persons living there were William and his two young, minor daughters and that his own beloved wife was dead, her ashes just inside the door in a visible urn that was pointed out to them. (¶¶ 46, 62, 64-65, 82, 91, 106, 102, 41-43, 22, 420; JA132-34,136-39,129,190-92).

d. William Produces the Very Legal Document Entitling Him to Occupancy and Possession - His Lease - and Other Documentary Evidence.

William explained he had been living in his Home for months and produced his fully executed lease to the Constables, who accepted and read it several times and then took it back to their car to read again. William offered to produce additional written documentation - including paperwork from the State of Delaware, and electric, utility and internet bills - further establishing his legal right to be there but was refused. (¶¶ 61-85, 100, 420, 39, 145, Exs.A&B to Compl.; JA134-36,138,190-92,131-32,147,197-200).

e. The Constables Accuse William of Being a Liar.

Despite much corroborative evidence (¶¶ 71-72, 46, 48-49, 57-62, 64-71, 83-85, 105-06, 100; JA133-36,138-39), the Constables told William he was "a liar, a thief and a fraud" and that his lease was not valid because it "was neither notarized nor 'watersealed,'" neither of which have ever been required of leases under Delaware law. See 25 Del.C. Chapters 51-59. (¶¶ 74-77; JA135).

f. The Constables Throw the Murphy Family Out of their Home.

The Constables gave the Murphy family 15 minutes and then threw them out of their Home. They were told their "only legal option" was to go file a lawsuit after the fact. (¶¶ 95, 47, 63, 77, 87-88, 107, 89-93, 82; JA133-37,139). Other than some warm clothes, the Murphy family was forced to leave behind all of their Earthly possessions, including the ashes of William's beloved late wife,

the children's laptop computers for attending school during COVID and other necessities of life. (¶¶ 96, 98, 148, 163-64, 195, 82, 22; JA136-38,147,150,157-58, 136,129).

g. Defendants' "Evict First, Ask Questions Later" Policy.

In doing so, the Constables "enforced" (¶ 348; JA179-80) and acted "pursuant to a policy or practice" of the Justices of the Peace defendant. (¶ 79; JA135-36). The existence of this policy was specifically pled, (¶¶ 348, 79, 86, 341, 407, 421; JA179-80,135-36,189,192), and defined as -

> a policy or practice of the defendant Justices of the Peace, during the pandemic and state of emergency in the State of Delaware, to always "evict first, and ask questions later" whenever there is a challenge to an eviction Order on the day of the eviction, despite whatever proof and evidence a tenant has that the eviction command is improper and illegal.

(¶ 79; JA135-36). It contains "no exception or reasonable accommodation for legal, logical ... or other reasons." (¶ 86; JA136).

h. One Defendant Admits Consciousness of Wrongdoing.

As they were seizing the Murphy family Home, Constable Brison stated to the other Constables, "[i]f anything goes wrong, I will take the fall for it." By this, he meant that he knew it was illegal to throw someone out of their Home under these circumstances but he was going to do it anyway pursuant to their policy. (¶¶

103-04; JA138).

4. Facts Later Revealed by the Internal Governmental Reports Produced by Defense Counsel.

a. Actual Knowledge That William Is Blind.

The reports confirm that the Constables knew William was blind. He even had to be "escorted to the door" by his nephew. (¶¶ 112-14; JA140).

b. William Lacked Any Prior Notice or Knowledge of Eviction Proceedings Against Him.

They confirm that William lacked any prior knowledge or notice whatsoever that he was in danger of being evicted from his Home. (¶¶ 115-17; JA140).

c. William Explained Viola Wilson Might Be a Former Tenant Who Did Not Live There.

They confirm William told them that no one named Viola Wilson lived there but added he thought she might be a prior tenant because of mail that was sometimes delivered. (¶¶ 118, 124-25; JA141-43).

d. William Explained He Had a Lease and Gave His Original to the Constables Who Reviewed It.

They confirm William explained that he had a written Lease Agreement, went back into his Home to retrieve it and gave it to the Constables who examined and discussed it amongst themselves. (¶ 119; JA141).

e. The Constables Believed His Lease Was "Legitimate."

They memorialize the Constables' own belief that William's lease "appeared somewhat legitimate," "contained [the landlord's] signature" and they confirmed with the landlord himself that he did not notarize or watermark his leases. (¶¶ 120-21; JA141).

f. William Offered Them Other Official Government Documentation.

They confirm William explained he had additional "documentation" showing he was receiving "government assistance that had helped pay for his" Home. (¶ 122; JA141-42).

g. The Constables' Belief Notice Naming Person "A" Is Legal Notice to Different Person "B".

All three reports make clear the Constables' belief that a notice naming "Viola Wilson" was legally sufficient notice to take the home of an entirely different person named "William Murphy." (¶¶ 123-26; JA142-43).

h. The Constables Contacted Their Non-Judicial Supervisor at the J.P. Court.

Two of the three reports state that the Constables did not blindly rely upon the eviction Order that day but instead contacted their non-judicial Chief Constable supervisor at the J.P. Court for instructions on how to proceed given William was blind, had no notice or knowledge of the eviction proceedings and had a lease. They fully "advised him of the situation" and he told them to evict

William and his young daughters anyway and if they wanted to challenge it, they had to go file a lawsuit. (¶¶ 127-30; 324-39; JA143-44,176-78).

i. The "Evict First, Ask Questions Later" Policy Exists.

In everything but name, all three statements confirm the factual existence of the "evict first, ask questions later" policy or practice alleged in the original Complaint. (Compare ¶¶ 131-34, 328 with ¶¶ 79, 86, 348, 341, 407, 421; JA144,177,135-36,179-80,189,192).

j. No Reasonable Accommodation Was Offered & Other Corroborating Details.

They also corroborate at least 9 other factual details made by the Plaintiffs in the original Complaint and already set forth above, including legally relevant facts that none of the requirements of the ADA were complied with such as: giving William the eviction notice in braille; conducting a communications assessment; providing a qualified reader; or offering any type of reasonable accommodation. (¶¶ 135-36; JA145).

k. Internally Contradictory Details.

The reports also contradict themselves on key points. First, two reports state that an eviction notice naming "Viola Wilson" had previously been "posted" to the Home's door but another contradicts this and instead states that a "previous eviction letter" addressed to "Viola Wilson" had been mailed to the house with no

mention of anything on the door. (¶ 137; JA145-46).

Finally, all reports state that at some point, the landlord showed up during the eviction process, although they contradict each other as to if this occurred before or after the eviction had already begun. (¶ 138; JA146).

C. Plaintiffs Are Homeless for 13 Days.

Blind and now homeless William eventually made his way to the courthouse, dictated what had occurred to a frail, elderly but sighted family member who came to help since no assistance was forthcoming from the J.P. Court, and filed a lawsuit to get his Home back. But only after the news media began calling the court - asking how they could take the Home of a blind man, with a signed lease, receiving documented government rental assistance, without notice or a hearing, during a snowstorm and eviction moratorium declared by the Governor and the Chief Magistrate of the same court - was any progress made. (¶¶ 139-151, 165-93; JA146-48,150-56). After 7 long days of homelessness, a brief but fair hearing was held and it was quickly determined the Murphy family had been unlawfully evicted. However, because of the harsh winter weather conditions, it was another 6 days before they could get access to the Home to retrieve their possessions and necessities of life. (¶¶ 152-64; JA148-50).

D. Injuries.

The Murphy family was homeless and without their possessions for 13 days, trying to survive and living briefly in a cheap motel and then the New Castle County homeless shelter. (¶¶ 406, 139, 148-49, 164, 195, 5; JA189,146-47,150,157-58,125). Their injuries include, *inter alia*, specifically identified economic damages. (¶¶ 194-95;JA156-58).

E. Additional Relevant Facts From Throughout the Complaint.

1. No Notice to the Murphy Family.

The Murphy family never received any prior notice whatsoever that they were in danger of losing their Home prior to the Constables showing up that snowy morning. (¶¶ 375-406,262-65,348,115-17;JA186-89,167,179-80,140).

2. No Attempt at Reasonable Accommodation Was Made.

Defendants neither offered nor provided any accommodation whatsoever for William's blindness. (¶¶ 136,282-93,339;JA145,170-72,178). It is undisputed that none of the legal notices addressed to the mystery "Viola Wilson" were in braille or in any of the other forms required by the ADA when giving legal notice to a blind person. (¶¶ 285-92,384-85,136;JA170-71,187,145).

3. Services or Activities of the Public Entity that Plaintiffs Were Denied.

The Complaint exhaustively details 13 benefits and services of the J.P. Court that Plaintiffs were denied. (¶¶ 233-80,165-93;JA162-69,150-56). The

brief summary list (¶ 233;JA162) of those is:

1. Service of a summons or other process in a legal proceeding affecting their legal rights.

2. Acquisition of personal jurisdiction in such a proceeding.

3. Later Rule 5 service of pleadings in an eviction proceeding affecting their legal rights.

4. The statutory right of a jury trial before being deprived of their Home.

5. Summary possession requirements under 25 Del.C. §§ 5704-06.

6. Eviction protections under multiple COVID Administrative and Standing Orders of the Justice of the Peace Court and the Governor's Emergency Declarations.

7. Federal and State procedural Due Process requirements.

8. Federal and State seizure requirements.

9. Required statutory 60 day notice of termination of a lease.

10. Statutory right to occupy a leasehold under 25 Del.C. § 5141.

11. Statutory right to the correct person in an eviction proceeding.

12. Statutory summary possession proceeding rights.

13. Other protections of the Delaware Residential Landlord-Tenant Code.

4. The ADA and Delaware Courts.

The Delaware courts explain on their websites that they abide by all requirements of Title II of the ADA. (¶¶ 311-19;JA175-76).

5. "Close Supervision" of Constables by their Supervisors.

The State also publicly advertises that J.P. Court Constables operate under the "close supervision" of their supervisors at all times. (¶¶ 320-24;JA176-77).

SUMMARY OF THE ARGUMENT

1. Defendants violated Fourteenth Amendment procedural due process by evicting the Murphy family from their Home without: (1) prior notice; and (2) acquiring personal jurisdiction over them.

2. Defendants' failure to provide the blind Plaintiff with notice in braille or make any reasonable accommodations whatsoever for his disability deprived him of thirteen judicial services including "notice" that he was in danger of losing his home and satisfy the causation requirement of a *prima facie* case under the ADA.

3. It was objectively unreasonable to seize Plaintiffs' Home despite Defendants' actual knowledge they were evicting the wrong family, a family which had not received any prior notice whatsoever of the eviction.

4. Defendants do not receive quasi-judicial immunity because they had

actual knowledge: they were evicting the wrong family from their Home; and that the family had not received either traditional prior notice or an ADA compliant notice.

ARGUMENT

I. THE FAILURE TO GIVE PRIOR NOTICE TO AND ACQUIRE PERSONAL JURISDICTION OVER PLAINTIFFS BEFORE EVICTING THEM FROM THEIR HOME VIOLATED PROCEDURAL DUE PROCESS.

A. Standard of Review.

Appellate review of a motion to dismiss under Fed.R.Civ.P. 12(b)(6) is plenary. Connelly v. Lane Constr. Corp., 809 F.3d 780, 786 n.2 (3d Cir. 2016). A "complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Id. at 786. "[A]llegations of historical fact continue to enjoy a highly favorable standard of review." Id. at 790.

1. Insider Accounts Strongly Support Plausibility.

This Court has explained that the existence of a "detailed insider account," although not necessary for a complaint, "strongly supported [ ] plausibility." Schuchardt v. President of the U.S., 839 F.3d 336, 348 (3d Cir. 2016).

B. Introduction.

Although the written decision below did not address the merits on due process, at the oral argument on the earlier motion to dismiss, the District Court

repeatedly explained its view that there were no due process concerns whatsoever with what had occurred in taking the Murphy family Home. Although not a model of clarity due to the initial lack of a court reporter,[3] there are sufficient later transcript references to make this clear:

- "I'm already past the notice. We've dealt with the notice, maybe not to your satisfaction, but we've dealt with the notice," (tr. at 39; JA71);

- concluding "notice was already given. It's undisputed that at the time the eviction is taking place, Mr. Murphy is on notice that there was an eviction notice," (tr. at 74; JA106); and

- the due process argument is "really bad" and "easily dismissed." (Tr. at 77; JA109).

A more extensive discussion is found at pages 44-56 of the transcript. (JA76-88).

C. Procedural Due Process Basics.

The right to procedural due process is one of the few "absolute" constitutional rights,[4] because "the law recognizes the importance to organized

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[3] As the District Court alluded to on the record (tr. at 5; JA37), there were unexpected court reporter coverage problems which delayed the argument about three hours. During that delay, the Court came out and discussed the merits of the case with counsel. Merits discussion similarly continued even after the conclusion of the transcript when the substitute court reporter had to return to a hearing before her primary judge, as reflected by the unnumbered oral Order on the docket later that day (JA31) which referenced substance not found in the transcript.

[4] Carey v. Piphus, 435 U.S. 247, 266 (1978); CMR D.N. Corp. v. City of Philadelphia, 703 F.3d 612, 627 (3d Cir. 2013).

society that these rights be scrupulously observed." Carey, 435 U.S. at 266.

Procedural due process analysis has two steps. First, whether there is a liberty or property interest. Second, the process that is due. Hill v. Borough of Kutztown, 455 F.3d 225, 233-34 (3d Cir. 2006).

1. Our Two Protected Interests - Liberty & Property.

a. Two Separate Liberty Interests.

"The liberty rights protected by procedural due process ... may arise from the Constitution itself, by reason of guarantees implicit in the word 'liberty,' or ... from an expectation or interest created by state laws or policies." Steele v. Cicchi, 855 F.3d 494, 507 (3d Cir. 2017) (cleaned up).

(1). The Lack of Personal Jurisdiction Denied Liberty.

Personal jurisdiction determines whether a court has power over the parties to a legal dispute.[5] "Individual liberty is what the Supreme Court emphasizes as the foundation of the personal jurisdiction requirement." Douglass v. Nippon Yusen Kabushiki Kaisha, 46 F.4th 226, 236 (5th Cir. 2022) (en banc).

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[5] See, e.g. Genuine Parts Co. v. Cepec, 137 A.3d 123, 129 (Del. 2016) ("Personal jurisdiction refers to the court's power over the parties in the dispute."); Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 577 (1999) ("Jurisdiction to resolve cases on the merits requires both authority over the category of claim in suit (subject-matter jurisdiction) and authority over the parties (personal jurisdiction), so that the court's decision will bind them.").

> The requirement that a court have personal jurisdiction flows ... from the Due Process Clause. The personal jurisdiction requirement recognizes and protects an individual liberty interest. It represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty.

Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 (1982); accord J. McIntyre Mach., Ltd. v. Nicastro, 564 U.S. 873, 884 (2011). This is because "due process protects the individual's right to be subject only to lawful power." J. McIntyre Mach., 564 U.S. at 884.

(2). The Special Constitutional Status of William's "Home" is a Liberty Interest.

Our case "illustrates an essential principle: Individual freedom finds tangible expression in property rights. At stake ...[is] the security and privacy of the home and those who take shelter within it." U.S. v. James Daniel Good Real Prop., 510 U.S. 43, 61 (1993). Few things have a more ancient pedigree or rarified and protected constitutional status than the right of a person to be secure in their Home against government intrusion. In the words of Lord Edward Coke,[6] "for a man[']s house is his castle, *et domus sua cuique est tutissimum refugium*; for where shall a man be safe, if it be not in his house?" 3 Edward Coke, Institutes of

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[6] Lord Coke was "widely recognized by the American colonists as the greatest authority of his time on the laws of England." Payton v. N.Y., 445 U.S. 573, 594 (1980) (cleaned up); id. at 596 (noting "the prominence of Lord Coke" in the eyes of the Constitutional Framers).

the Laws of England 162 (1644).[7] In his own seminal work, Sir William Blackstone similarly explained that "every man's house is looked upon by the law to be his castle." 3 William Blackstone, Commentaries on the Law of England 288 (1768). And in words attributed by the Supreme Court to the Great Commoner, William Pitt the Elder, "[t]he poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter." Miller v. U.S., 357 U.S. 301, 307 (1958).

As the Supreme Court has explained -

> The common-law sources display a sensitivity to privacy interests that could not have been lost on the Framers. The zealous and frequent repetition of the adage that a "man's house is his castle," made it abundantly clear that both in England and in the Colonies "the freedom of one's house" was one of the most vital elements of English liberty.

Payton, 445 U.S. at 596-97 (internal footnotes omitted)(emphasis added). The words of the Framers themselves bear this out. For example, John Adams wrote that "A man's house is his castle; and while he is quiet, he is as well guarded as a prince in his castle." Id. at 597 n.45 (quoting 2 Legal Papers of John Adams 142

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[7] See also Semayne's Case, 5 Coke's Rep. 91a, 91b, 77 Eng.Rep. 194, 195 (K.B. 1603) ("the house of every one is to him as his castle and fortress, as well for his defense against injury and violence, as for his repose")(quoted in both Payton, 445 U.S. at 596 n.44 and Mason v. State, 534 A.2d 242, 246 n.6 (Del. 1987)).

(L.Wroth & H.Zobel eds. 1965)). Similarly, in the words of the Penman of the American Revolution who signed the Constitution as a Delaware delegate -

> I know also, that the greatest asserters of the rights of Englishmen have always strenuously contended, that [the government's power to invade one's home] was dangerous to freedom, and expressly contrary to the common law, which ever regarded a man's house as his castle, or a place of perfect security.

John Dickinson, Letters from a Farmer in Pennsylvania, Letter IX (1767), in Empire and Nation 54 (Forrest McDonald, ed.) (2d Ed. 1999). As the Delaware Supreme Court has explained, "[t]he Framers of the United States Constitution were concerned with the problem of searches and seizures by public officials. The concept of the home as a privileged place, the privacy of which may not be disturbed by unreasonable governmental intrusion, is basic in a free society." Mason, 534 A.2d at 246.

This common law tradition lives on in the plain text of the Fourth Amendment, "[t]he right of the people to be secure in their ... houses ... against unreasonable searches and seizures shall not be violated." This "language unequivocally establishes the proposition that at the very core of the Fourth Amendment stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion." Payton, 445 U.S. at 589-90 (cleaned up).

This "ancient concept that 'a man's home is his castle' into which 'not even the king may enter' has lost none of its vitality" today. Rowan v. U.S. Post Office Dep't, 397 U.S. 728, 737 (1970).

> A man can still control a small part of his environment, his house; he can retreat thence from outsiders, secure in the knowledge that they cannot get at him without disobeying the Constitution. That is still a sizable hunk of liberty — worth protecting from encroachment. A sane, decent, civilized society must provide some such oasis, some shelter from public scrutiny, some insulated enclosure, some enclave, some inviolate place which is a man's castle.

Silverman v. U.S., 365 U.S. 505, 511 n.4 (1961)(emphasis added). For more than 138 years, the Supreme Court has -

> stated in resounding terms that the principles reflected in the [Fourth] Amendment ... "apply to all invasions on the part of the government and its employe[e]s of the sanctity of a man's home and privacies of life."

Payton, 445 U.S. at 585 (quoting Boyd v. U.S., 116 U.S. 616, 630 (1886)).

b. Fourteen Property Interests Denied.

"Property interests are not created by the Constitution, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 538 (1985)(cleaned up).

The Complaint identifies and extensively details at least fourteen sources of the property right the Murphy family has in their home under state law, (¶¶ 357-

71; JA183-86),[8] including:

- the many English common law sources outlined above.[9]
- numerous provisions of the Delaware Constitution.[10]
- Plaintiffs' lease contract for their Home, enforceable under both the Landlord-Tenant Code, 25 Del.C. § 5101, et seq.,[11] and Delaware common law.[12]
- the tenant protections summary prepared by the Consumer Protection Unit of the Delaware Attorney General's Office that is required to be

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[8] Many of these also create additional liberty interests.

[9] See Bridgeville Rifle & Pistol Club, Ltd. v. Small, 176 A.3d 632, 645 n.62 (Del. 2017)(en banc)("This Court has repeatedly held that Delaware law includes the English common law as it existed in 1776").

[10] See Del.Const. Art. I, § 6 ("[t]he people shall be secure in their ... houses ... and possessions, from unreasonable searches and seizures."); id. at § 9 ("every person for an injury done him or her in his or her ... person, movable or immovable possessions, shall have remedy by the due course of law, and justice administered according to the very right of the cause and the law of the land."); id. at § 7 (protecting against "depriv[ations] of life, liberty or property, unless by the judgment of his or her peers or by the law of the land."); id. at Pmbl. ("all people have by nature the rights ... of ... protecting ... property.").

[11] See, e.g. 25 Del.C. §§ 5106 ("Rental agreement; term and termination of rental agreement"), 5109 ("Rental agreement; promises mutual and dependant"), 5117 ("Remedies for violation of the rental agreement or the Code"), 5141(38) (definition of "Tenant"), 5141(23) (definition of "Person"), 5502 ("Landlord remedies for failure to pay rent"), 5702 ("Grounds for summary proceeding"), 5704 ("Commencement of action and notice of complaint"), 5705 ("Service and filing of notice"); 5706 ("Manner of service"); 5711 ("Judgment"); 5713 ("Jury trials").

[12] See generally VLIW Tech., LLC v. Hewlett-Packard Co., 840 A.2d 606, 612 (Del. 2003) (recognizing the elements of a breach of contract claim).

given to new tenants at the beginning of the rental term.[13]

- Governor Carney's various emergency declarations and modifications barring evictions absent a specific factual finding that it "is necessary in the interest of justice" and irreparable harm would otherwise result. (¶¶ 368, 259-61, 165-78; JA185,166-67,150-53).

- the various standing and administrative Orders of the J.P. Court barring evictions in accord with the Governor's emergency declarations and modifications. (¶¶ 184-92, 258-61, 370-71; JA154-56,166-67,185-86).

- the July 2, 2020 eviction prevention declaration by Delaware's Governor, Attorney General, State Housing Authority Director and Chief Magistrate Davis. (¶¶ 369, 182; JA185,154).

For all of these reasons, the Murphy family had multiple independent protected liberty and property interests in their Home.

2. The Process That is Due.

Once a protected interest is established, the familiar three-part balancing test of Mathews v. Eldridge, 424 U.S. 319, 335 (1976), applies.

a. The Two Paramount Private Interests.

For the reasons addressed in Argument **I.C.1.a.(2).** above, the right of a person to be secure in his home is paramount and has an ancient pedigree. A citizen's "right to maintain control over his home, and to be free from governmental interference, is a private interest of historic and continuing

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[13] See 25 Del.C. § 5118.

importance." James Daniel Good, 510 U.S. at 53-54. It has long been the law that "the loss of kitchen appliances and household furniture [i]s significant enough to warrant a predeprivation hearing." Id. at 54 (citing Fuentes v. Shevin, 407 U.S. 67, 70-71 (1972)). But "[t]he seizure of a home produces a far greater deprivation" and so "cannot be classified as *de minimis* for purposes of procedural due process." Id. at 54. The Supreme Court also has specifically addressed a tenant's due process notice interest in the context of a sheriff executing writs of eviction and found the tenants "have been deprived of a significant interest in property: indeed, of the right to continued residence in their homes." Greene v. Lindsey, 456 U.S. 444, 451 (1982).

Similarly, for more than a century, the Supreme Court has held that "all systems of law established by civilized countries" require a court to have personal jurisdiction over the parties. Twining v. State of N.J., 211 U.S. 78, 110-11 (1908) (overruled on other grounds by Malloy v. Hogan, 378 U.S. 1 (1964)). This is because -

> It is fundamental that before a court may impose upon a defendant a personal liability or obligation in favor of the plaintiff or may extinguish a personal right of the defendant it must have first obtained jurisdiction over the person of the defendant.

Ayres v. Jacobs & Crumplar, P.A., 99 F.3d 565, 569 (3d Cir. 1996).

The interests herein are of the highest importance.

b. The Risk of Erroneous Deprivation and Value of Additional Procedures.

The risk of an erroneous deprivation here is substantial given the weighty private interests at stake and the need for additional procedures is apparent given the complete breakdown of the process that left the Murphy family homeless and without their possessions for 13 days.

More than fifty years ago, the Supreme Court held -

> Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. It is equally fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner.

Fuentes, 407 U.S. at 80 (cleaned up); see Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)("An elementary and fundamental requirement of due process ... is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."). This is the "core" of the right, LaChance v. Erickson, 522 U.S. 262, 266 (1998), and "central to the Constitution's command." James Daniel Good, 510 U.S. at 53. Importantly -

> The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment—to minimize substantively unfair or mistaken deprivations of property.

Id. (cleaned up). "For when a person has an opportunity to speak up in his own

defense, and when the State must listen to what he has to say, substantively unfair and simply mistaken deprivations of property interests can be prevented." Fuentes, 407 U.S. at 81. "[M]istaken deprivations of property" are one of the very circumstances due process of law is supposed to prevent. Id. That it did not do so here despite the Constables' actual knowledge they were evicting a family, the wrong family, that had not received any prior notice or opportunity to be heard whatsoever, cries out for the necessity of additional procedures to prevent recurrence.[14]

What of existing procedures relating to personal jurisdiction? "Because personal jurisdiction necessarily addresses both the power of the court to create or affect legal interests and the rules of competence whereby adjudicatory authority is asserted, it is tested against both constitutional and statutory standards." Max Daetwyler Corp. v. R. Meyer, 762 F.2d 290, 293 (3d Cir. 1985). As noted above, our facts fail the constitutional standard. And as explained below, the existing statutory and rules based standards also were not satisfied.

As the Complaint addresses at length (see ¶¶ 234-49; JA162-65), personal

[14] Given the Supreme Court has recognized the applicability of these fundamental due process principles in the context of sheriffs executing evictions of the actual tenant named in the writ of eviction, Greene, 456 at 449-56, they apply with even greater weight when the family being evicted is not the one named in the writ.

jurisdiction requires a valid means of service.[15] And under both state and federal law, service on the wrong person does not create personal jurisdiction. The Delaware Supreme Court has specifically held that service upon the incorrect person under Superior Court civil procedural rule 4(f) is "a nullity" so "personal jurisdiction over" the proper person "had not been secured." Furek v. Univ. of Del., 594 A.2d 506, 513-14 (Del. 1991). The "technical niceties" of service matter and failure to comply with them is "inexcusable," Ayres v. Jacobs & Crumplar, P.A., 1995 WL 704781, *4 (D.Del. Nov. 20, 1995), and "fatal." Ayres, 99 F.3d at 569. Similarly, both Delaware and federal law are clear that even actual notice does not replace formal service of process.[16]

Because Plaintiffs were never served, Defendants never acquired personal

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[15] See, e.g. In re P3 Health Grp. Holdings, LLC, 282 A.3d 1054, 1058 (Del.Ch. 2022)("A proper exercise of personal jurisdiction requires a valid means of serving the defendant, and the resulting exercise of jurisdiction must provide the defendant with the protections afforded by minimum standards of due process."); Fischer v. Fed. Express Corp., 42 F.4th 366, 381 (3d Cir. 2022)("For a court to exercise personal jurisdiction over a defendant, the defendant must be served process, alerting the defendant to the pendency of the suit and the nature of the claims against her.").

[16] See, e.g. Skye Min. Invs., LLC v. DXS Cap. (U.S.) Ltd., 2021 WL 2983182, *3 (Del.Ch. July 15, 2021)("actual notice by a defendant without service of process does not satisfy this constitutional requirement")(cleaned up); Showell v. Div. of Family Servs., 971 A.2d 98, 102 (Del. 2009)("a party's actual knowledge of a lawsuit does not excuse a failure to give statutorily mandated notice."); Ayres, 99 F.3d at 569 ("Notice of a claim is not sufficient.").

jurisdiction over them. Evicting them anyway despite the Constables actual knowledge they were never served with process violated due process.

c. The Government's Interest.

The governmental interest in proceeding with an eviction of the wrong family from their Home - the only adult a blind man with a valid lease, with no notice of the eviction, during a snowstorm and eviction moratorium no less - is non-existent. Compare Greene, 456 U.S. at 451 n.4 (rejecting the government's claim that efficiency of the state statutory eviction process can trump the necessity of "the constitutional requirement of adequate notice.") Ours also is not a case involving a car or other property that can quickly be removed from the jurisdiction. "Because real property cannot abscond, the court's jurisdiction can be preserved without prior seizure." James Daniel Good, 510 U.S. at 57.

Indeed, given it took less than 10 minutes of court hearing time in the Murphy family's own later filed J.P. Court lawsuit for the conscientious Magistrate to determine William had a valid lease and had been wrongfully evicted from his Home (¶¶ 152-64; JA148-50), it is apparent that any imposition upon the government of ensuring prior notice and opportunity to be heard here is *de minimis*. "Requiring the Government to postpone seizure until after an adversary hearing creates no significant administrative burden ... [a]nd any harm

that results from delay is minimal in comparison to the injury occasioned by erroneous seizure." Id. at 59.

3. No Notice Whatsoever - a Helpful Recent Decision.

Although not on all fours, instructive is the recent Fourth Circuit eviction and seizure decision in Todman v. Mayor and City Council of Baltimore, 104 F.4th 479 (4th Cir. 2024). There, even a posted legal 'notice' to the correct tenant was found to completely fail to provide either the notice or opportunity to be heard required by due process because it failed to inform the tenants of the situation they faced. Id. at 488-90; see id. at 485 (describing the notice as "misleading and confusing at best"). The Circuit repeatedly found that because the plain text of the notice itself made clear to the tenant that it did not apply to them,[17] it -

> seemed more likely to impede the [tenants'] understanding of their predicament than to fairly inform them of it. It was certainly not "reasonably calculated to convey" the information the [tenants] needed in order to avoid the deprivation that awaited them.

Id. at 489. The Court explained, "[r]especting one of the Constitution's most basic guarantees should be simple and straightforward." Id. at 490.

Applied to our present case, an eviction notice naming person "A" (Viola Wilson) cannot be fairly said to put different person "B" (William Murphy) on

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[17] See id. at 489 ("did not apply to them," "wouldn't apply to them," "neither of which applied to them" and "was likewise inapplicable").

notice that he is in any danger whatsoever of losing his Home. This is the opposite of the "simple and straightforward" notice that "one of our Constitution's most basic guarantees" requires. Id.

D. Ex Parte Young.

The District Court held there was only a threadbare conclusory claim of the factual existence of the "evict first, ask questions later" policy or practice, as needed for purposes of Ex parte Young, 209 U.S. 123 (1908). (Op. at 14-16; JA18-20).

But this violates the standard of review since the existence of the policy was factually pled and also specifically defined in the original Complaint. (See Facts at **B.3.g.**). The First Amended Complaint subsequently then incorporated additional supporting facts found in the Constables' own internal governmental reports which confirmed the factual existence of this policy or practice in everything except its actual name. (See Facts at **B.4.i.**). These same internal reports continue and document that the individual Constables called their Chief Constable supervisor, explained the entire situation to him and were specifically instructed to evict the Murphy family from their Home anyway, and that if William wanted to challenge it he had to go file an after-the-fact lawsuit to resolve the problem later. (See Facts at **B.4.h.**). So Defendants' own written internal

statements, produced by their own lawyers, functionally admit the existence of the "evict first, ask questions later" policy or practice alleged in the Complaint.

As explained in Argument **I.A.1.** above, these three internal governmental reports qualify as "detailed insider account[s]" under this Court's precedent and, although not required, "strongly support[] [ ] plausibility." Schuchardt, 839 F.3d at 348. The district court's conclusion to the contrary is legal error.

II. DEFENDANTS' FAILURE TO PROVIDE NOTICE IN BRAILLE OR MAKE ANY REASONABLE ACCOMMODATION AT ALL DISCRIMINATED AGAINST PLAINTIFF BECAUSE OF HIS BLINDNESS AND CAUSED HIM TO LOSE HIS HOME.

A. Standard of Review.

The standard of review is plenary. (See Argument **I.A.** above).

B. Brief Summary.

The ADA's "effective communication" requirement mandates "reasonable accommodations" be made by court systems when dealing with blind persons, including in giving them legal "notice." The failure to provide Plaintiff with an eviction notice in braille or provide any other reasonable accommodation deprived him of the "equal opportunity" to receive fundamental due process and other legal protections and caused him to lose his Home.

C. The Remedial Purpose of the ADA.

1. Congressional Findings.

The purpose of the ADA is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). Included in Congressional findings of fact was that the ADA was specifically intended to remedy "the discriminatory effects of ... communication barriers," "failure to make modifications to existing ... practices" and the "relegation [of the disabled] to lesser services, ... [and] benefits." Id. at (a)(5).

2. State Court Systems Are Covered.

"The unequal treatment of disabled persons in the administration of judicial services has a long history, and has persisted despite several legislative efforts to remedy the problem." Tennessee v. Lane, 541 U.S. 509, 531 (2004). The Supreme Court has made clear that barriers preventing equal access by the disabled to the justice system was one of the specific problems Congress intended to remedy by enacting Title II. See id. at 524-34. In light of this, it is universally acknowledged that even state court systems must comply with the ADA. This has been recognized by the U.S. Supreme Court,[18] this Court,[19] and the Delaware

[18] See id. at 533 (noting "Title II's affirmative obligation to accommodate persons with disabilities in the administration of justice").

[19] See Geness v. Cox, 902 F.3d 344, 361-65 (3d Cir. 2018)(systemic breakdown within the Pennsylvania court system which, *in toto*, deprived the disabled of their right under the ADA to equal application of due process of law).

Supreme Court.[20] It is why the U.S. Department of Justice ("USDOJ") has made clear that "Title II coverage ... is not limited to 'Executive' agencies, but includes activities of the ... judicial branches of State and local government." 28 C.F.R. Pt. 35, App. B, § 35.102. The USDOJ has repeatedly cautioned that -

> Because of the importance of effective communication in State and local court proceedings, special attention must be given to the communications needs of individuals with disabilities involved in such proceedings.[21]

Due to the sheer number of formal complaints received about state court systems defying the requirements of 'effective communication,' the USDOJ also has -

> caution[ed] public entities that without appropriate auxiliary aids and services, [disabled] individuals are denied an opportunity to participate fully in the judicial process, and denied benefits of the judicial system that are available to others.

28 C.F.R. Pt. 35, App. A, § 35.160; see id. ("The Department consistently interprets [§§ 35.130(a) and 35.160] to require effective communication in courts ... and with law enforcement officers."). The USDOJ regularly publishes multiple written guides to help state courts avoid violating the ADA's clear requirements.[22]

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[20] See In re Murphy, 283 A.3d 1167, 1176-77 (Del. 2022) (en banc) (applying the ADA to the Delaware Bar exam).

[21] USDOJ, Title II Technical Assistance Manual at § II.7.1000, archive.ada.gov/taman2.htm ("Manual") (emphasis added).

[22] See Manual; USDOJ, ADA Requirements: Effective Communication (Jan. 2014), archive.ada.gov/effective-comm.pdf ("Requirements"); USDOJ, ADA Best Practices Tool Kit for State and Local Governments (2007), archive.ada.gov/ pcatoolkit/toolkitmain.htm ("Tool Kit"); USDOJ, ADA Update: A Primer for State

Finally, given our case involves access to judicial services, there are no Eleventh Amendment immunity concerns.[23]

D. The Law.

To state a claim under the ADA, a plaintiff must demonstrate: (1) he is a qualified individual; (2) with a disability; (3) who was excluded from participation in or denied the benefits of the services, programs or activities of a public entity, or was subjected to discrimination by any such entity; (4) by reason of his disability. Durham v. Kelley, 82 F.4th 217, 225 (3d Cir. 2023). An additional showing of deliberate indifference is required for compensatory damages. Id.

1. Failure to Make a Reasonable Accommodation is Defined as Discrimination.

Importantly, overt prejudice towards those with disabilities is not required. Instead -

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and Local Governments (2015), archive.ada.gov/regs2010/titleII_2010/titleII_primer.pdf ("Primer"). The USDOJ strongly encourages state and local judiciaries to rely on this guidance and the Technical Manuals, see 28 C.F.R. Pt. 35, App. A, § 35.160, as both Delaware and this Court have done. See, e.g. Young v. Red Clay Consol. Sch. Dist., 122 A.3d 784, 859 n.76 (Del.Ch. 2015); Yeskey v. Com. of Pa. Dep't of Corr., 118 F.3d 168, 171 n.5 (3d Cir. 1997).

[23] See, e.g. Lane, 541 U.S. at 531 ("we find that Title II unquestionably is valid § 5 legislation as it applies to the class of cases implicating the accessibility of judicial services"); U.S. v. Georgia, 546 U.S. 151, 159 (2006)("insofar as Title II creates a private cause of action for damages against the States for conduct that actually violates the Fourteenth Amendment, Title II validly abrogates state sovereign immunity.")(emphasis in original).

> discrimination under the ADA encompasses not only adverse actions motivated by prejudice and fear of disabilities, but also includes failing to make reasonable accommodations for a plaintiff's disabilities.

Haberle v. Troxell, 885 F.3d 170, 180 (3d Cir. 2018); see Berardelli v. Allied Servs. Inst. of Rehab. Med., 900 F.3d 104, 116 (3d Cir. 2018)("Title[] II ... define[s] discrimination to include the failure to make 'reasonable modifications.'"). As this Court recently held, "[r]efusing to make reasonable accommodations is tantamount to denying access." Durham, 82 F.4th at 226; see Lane, 541 U.S. at 531 (the ADA reflects recognition by Congress "that failure to accommodate persons with disabilities will often have the same practical effect as outright exclusion").

2. General Prohibitions - 28 C.F.R. § 35.130 - Services Must Be "As Effective" and "Equal To" Those Provided to the Sighted.

28 C.F.R. § 35.130(b)-(i) "establish the general principles for analyzing whether any particular action of the public entity violates [the non-discrimination] mandate." 28 C.F.R. Pt. 35, App. B, § 35.130.

a. Only Discriminatory "Effect" is Required.

Neither discriminatory animus nor intent are required. Instead, the "effect" of a government action on a disabled person, by itself, establishes liability. See, e.g. 28 C.F.R. §§ 35.130(b)(3)(ii) and (i), (b)(1)(iii), (iv), (i) and (ii). The ADA

prohibits not just "blatantly exclusionary" acts, but "policies and practices that are neutral on their face, but deny individuals with disabilities an effective opportunity to participate." 28 C.F.R. Pt. 35, App. B, § 35.130; see id. (the words and intent of Congress "would ring hollow" if the law "could not rectify the harms resulting from action that discriminated by effect as well as by design")(quoting Alexander v. Choate, 469 U.S. 287, 297 (1985)).

b. The Basics.

Concerning the blind, the ADA is violated when:

(1). a service to the blind "is not as effective in affording equal opportunity to obtain the same result[or] to gain the same benefit" as that provided to the sighted. 28 C.F.R. § 35.130(b)(1)(iii).

(2). an "opportunity to participate in or benefit from the ... service ... is not equal to that afforded" the sighted. Id. at (b)(1)(ii).

(3). the state "provide[s] different ... benefits, or services to" the blind "than is provided to others." Id. at (b)(1)(iv).

(4). it "[d]en[ies] a" blind person "the opportunity to participate in or benefit from the aid, benefit, or service." Id. at (b)(1)(i).

(5). "methods of administration" have the "effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program" as to blind persons. Id. at (b)(3)(ii).

(6). the state fails to "make reasonable modifications in policies, practices, or procedures ... when necessary to avoid discrimination." Id. at (b)(7)(i).

(7). the state "appl[ies] ... criteria that ... tend to screen out an individual with a disability ... from fully and equally enjoying any service" provided by the public entity. Id. at (b)(8). This "prohibits policies that unnecessarily impose ... burdens on individuals with disabilities that are not placed on others." 28 C.F.R. Pt. 35, App. B, § 35.130.

3. Specific Requirements - 28 C.F.R. § 35.160 - "Effective Communications."

Regarding the lack of braille notice posted on or mailed to the Home, public entities are forbidden from "rely[ing] on an adult" or "a minor child" with the disabled person to "facilitate the [effective] communication." 28 C.F.R. § 35.160(c)(2) and (3); see 28 C.F.R. Pt. 35, App. A, § 35.160 (exhaustively addressing this requirement). Those same public entities are then required to:

(1). ensure their "communications" with disabled persons "are as effective as communications with others." 28 C.F.R. § 35.160(a)(1); see 28 C.F.R. Pt. 35, App. A, § 35.160 (exhaustively addressing this requirement); Requirements at 1 (must be "equally effective").

(2). "furnish appropriate auxiliary aids and service where necessary" to give the disabled "an equal opportunity" to benefit from the service. 28 C.F.R. § 35.160(b)(1); see 28 C.F.R. Pt. 35, App. A, § 35.160 (exhaustively addressing this requirement); id. at App. B, § 35.160 (same); Requirements at 5 ("The ADA places responsibility for providing effective communication ... directly on covered entities").[24]

[24] The USDOJ "strongly advises public entities that they should first inform the individual with a disability that the public entity can and will provide auxiliary aids and services, and that there would be no cost for such aids or services." 28 C.F.R. Pt. 35, App. A, § 35.160; see id. (the "Department strongly encourages

(3). provide a blind person with a "[q]ualified reader; taped text; audio recording; Brailled materials" or similar materials. 28 C.F.R. § 35.104; see 28 C.F.R. Pt. 35, App. A, § 35.104; Requirements at 2-4; see id. at 1 ("must provide").

(4). ensure the "qualified reader" is "skilled in reading the language and subject matter," 28 C.F.R. Pt. 35, App. A, § 35.104, such that they can "effectively, accurately, and impartially" read and convey the content including "any necessary specialized vocabulary." 28 C.F.R. § 35.104; accord Requirements at 2.

(5). provide aid "in a timely manner, and in such a way as to protect the privacy and independence" of the disabled person." 28 C.F.R. § 35.160(b)(2).

(6). take into account the "context," "complexity," "nature," among other things, of the communication. 28 C.F.R. § 35.160(b)(2); see 28 C.F.R. Pt. 35, App. A, § 35.160 (exhaustively addressing this requirement); id. at App. B, § 35.160 (same); Requirements at 1, 4 (same). As the USDOJ has made clear, "legal document[s]" are considered "complex." Requirements at 4; see Primer at 7.

(7). consider the "number of people involved" as well as the "importance" of the issue being communicated. 28 C.F.R. Pt. 35, App. B, § 35.160; id. at App. A, § 35.160.

E. The Ruling Below.

The District Court's ADA ruling spanned about 5 pages. (Op. at 7-12; JA11-16). Although the Court had earlier requested that the parties focus their

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public entities to do a communication assessment of the individual with a disability when the need for auxiliary aids and services is first identified...."). There is "a continuing obligation" to assess and reassess "the auxiliary aids and services it is providing." Id.

arguments on the question of whether the J.P. Court was legally responsible for the actions of its Constable employees under Title II, (see tr. at 58-65, 70-72, 40-42; JA90-97,102-04,72-74),[25] the eventual decision did not expressly address this question. Instead, it mischaracterized the "sole dispute" to be whether causation had been pled (Op. at 8; JA12), and held Plaintiffs had failed to do so. (Id. at 8-12; JA12-16). Importantly, the decision failed to address "reasonable accommodation" or face that key legal issue in any way.

F. What Is Not Disputed.

The decision did not dispute (Op. at 2, 8; JA6,12) that William is a qualified individual with a disability. (See Facts at **A.1.**, **B.3.a.** and **B.4.a.**). Nor did it contest (Op. at 10-11, 8; JA14-15) that he was denied 13 judicial benefits and services listed above, such as "service" of process of a judicial proceeding and "personal jurisdiction." (See Facts at **E.3.**). Finally, despite being briefed (D.I. 33 at 12-14; JA32), the decision did not deny that the deliberate indifference standard was met. (See Facts at **B.3.-4.**, **E.**).

G. Legal Errors.

In the briefing below, Plaintiffs gave five reasons why the causation requirement had been satisfied. The District Court addressed only one of those

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[25] Which was then addressed in detail both in the First Amended Complaint (¶¶ 296-339; JA172-78) and briefing. (D.I. 33 at 9-11; D.I. 35 at 1-2; JA32).

five grounds and ignored the others. (Compare Op. at 8-12 with D.I. 33 at 5-8; JA12-16,32).

1. No Notice in Braille or Other Form of "Effective Communication" That Would Provide a Blind Person With "Equal Opportunity" to Benefit from the Notice.

The ADA compliant "notice" issues in this case are intertwined with Fourteenth Amendment due process principles on a fundamental level.[26] As review of the case law demonstrates, Fourteenth Amendment due process protections often go hand-in-hand with ADA reasonable accommodation requirements. See, e.g. Lane, 541 U.S. at 532 (the ADA "duty to accommodate is perfectly consistent with the well-established due process principle that ... a State must afford to all individuals a meaningful opportunity to be heard in its courts")(cleaned up); Geness, 902 F.3d at 363 (depriving a disabled person "of normal benefits of [legal] procedure and due process of law" states a claim under the ADA).

At the risk of oversimplification, given a court cannot take a person's home unless they receive meaningful prior notice (see Argument **I.**), the ADA requires all such notices from a court that affect the legal rights of blind persons be in

[26] This is not unusual. Cases regularly arise where an ADA violation arises out of the same facts underlying another constitutional violation. See, e.g. Georgia, 546 U.S. at 157-59 (Eighth Amendment context); Durham, 82 F.4th at 229 (same).

braille. The ADA forbids a court from acting in a way that has the "effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program" as to blind persons. 28 C.F.R. § 35.130(b)(3)(ii). The objective and purpose of the judicial service being provided here is notice. Absent a braille notice, Plaintiff's home cannot be taken from him.

Just last month, this Court emphasized the legal necessity of providing a disabled person with the "equal opportunity to participate in, and enjoy the benefits of, a service, program or activity of a public entity" as required by the "effective communication" requirement of the ADA. Le Pape v. Lower Merion Sch. Dist., 103 F.4th 966, 981 (3d Cir. 2024)(quoting 28 C.F.R. § 35.160(b)(1)) (emphasis added). So with a proper notice in braille, Plaintiff at least has the same "equal opportunity" as those who are not blind to learn that he is in danger of losing his Home, and then take steps to prevent it. See 28 C.F.R. § 35.160(b)(1) ("a public entity shall furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities ... an equal opportunity to participate in, and enjoy the benefits of [] a service.")(emphasis added).[27]

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[27] See also 28 C.F.R. § 35.130(b)(1)(iii)(a public entity may not provide a service "that is not as effective in affording equal opportunity to obtain the same result[] [or] to gain the same benefit ... as that provided to others")(emphasis added); id. at § 35.130(b)(1)(ii)(a public entity may not deny the "opportunity to participate in or benefit from the aid, benefit or service that is not equal to that afforded others")(emphasis added); Manual at § II-7.1000 ("A public entity must

Regardless of how the printed notice addressed to Viola Wilson was delivered to his Home,[28] it was not in braille. Accordingly, William could reasonably believe that he was not in danger of losing his Home because, since its enactment in 1990, the ADA has required that a blind person cannot have their home seized unless they were provided with prior legal notice in braille. But because Plaintiff was deprived of such legal notice, the J.P. Court deprived him of the very purpose and "objectives" underlying why such notices are required in the first place. He was similarly deprived of the "equal opportunity" afforded to the sighted to challenge the risk of an eviction even when a stranger is named in the captioned notice but the property to which it is mailed or posted has a tenant with every legal right to possession given a signed lease. Consequently, the lack of a braille notice 'caused' the injury herein.

2. Failure to Make Any Reasonable Accommodation.

This Court also has recently addressed the legal question of whether the

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ensure that its communications with individuals with disabilities are as effective as communications with others," the goal is "to provide equal access")(emphasis added); Requirements at 1 ("The goal is to ensure that communication ... is equally effective.")(emphasis added).

[28] The decision below faults the blind Plaintiff for not knowing whether it was nailed to his door or arrived in the mail. (Op. at 9; JA13). Of course, the statements of even the sighted Constables contradict each other on this same issue. (Facts at **B.4.k.**).

failure to grant a reasonable accommodation satisfies the causation requirement of an ADA *prima facie* case at the motion to dismiss stage. As already noted above, this Court explained that "[r]efusing to make reasonable accommodations is tantamount to denying access." Durham, 82 F.4th at 226.

Given the complete failure of the legal notice on multiple levels in our present case - including it not being in a form the blind Plaintiff could read or understand - under these circumstances there can be no more reasonable accommodation as required by the ADA than to put a full stop on the eviction, step back and give Plaintiff the meaningful prior notice in braille (and related opportunity to be heard) required by the Fourteenth Amendment. But this was not done. Given the government cannot take a person's home without prior notice and meaningful opportunity to be heard, the failure to give such notice in a form the blind Plaintiff can read and understand conclusively satisfies the causation requirement or, at minimum, plausibly alleges it. The lower court's requirement of an express and specific statutory mandate enacted in 1990 spelling out the exact reasonable accommodation to be given under an unlimited number of future factual scenarios decades later requires too much. (Op. at 10 n.5; JA14).

Ours is not a case where the government's accommodation is being challenged as inadequate. Instead, ours is a case where the government made no

effort at accommodation whatsoever, be it reasonable or otherwise. So rather than the "special attention" the ADA requires because of the "importance" of "court proceedings,"[29] Defendants gave Plaintiff's effective communication needs no attention at all. But the ADA's mandatory[30] "auxiliary aids and services" such as "[b]railled materials," "[q]ualified readers," "taped texts," "audio recordings" "or other effective methods of making visually delivered materials available to individuals who are blind" to the side,[31] the Constables did not even bother to read aloud to Plaintiff the non-brailled eviction notice naming Viola Wilson. Instead, disregarding both the "importance" of the issue[32] and the need "to protect [his] privacy and independence,"[33] they simply took this blind widower's Home, threw he and his two young daughters out on the street and left them homeless in the middle of a snowstorm during COVID. All without any prior notice whatsoever, be it in braille or otherwise, that losing their Home was even a remote possibility they were facing.

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[29] Manual at § II.7.1000.

[30] See 28 C.F.R. § 35.160(b)(1)("shall furnish"); Manual at § II-7.1000 ("is required to make available"); Requirements at 1, 4 ("must provide").

[31] 28 C.F.R. § 35.104; see Manual at § II.7.1100; Requirements at 2.

[32] 28 C.F.R. Pt. 35, App. B, § 35.160; id. at App. A, § 35.160; Manual at § II.7.1000.

[33] 28 C.F.R. § 35.160(b)(2).

The decision below misses the forest for the trees here. (See Op. at 11; JA15). Plaintiff's blindness triggers the reasonable accommodation requirements of the ADA. The failure to make any reasonable accommodation whatsoever then caused the Murphy family to lose their Home. Ours is a clear case where "[r]efusing to make reasonable accommodations is tantamount to denying access," Durham, 82 F.4th at 226, and the "outright exclusion" of the disabled. Lane, 541 U.S. at 531. The failure to provide any reasonable accommodation at all reflects the very type of "apathetic attitudes," "thoughtlessness," "indifference" and "benign neglect" that the ADA was intended to eliminate. S.H. ex rel. Durrell v. Lower Merion Sch. Dist., 729 F.3d 248, 264 (3d Cir. 2013) (quoting Alexander, 469 U.S. at 295-96).

3. Standards of Pleading are Not Standards of Proof.

Finally, to the extent the Court agrees that Plaintiffs failed to prove sufficient causal facts in their 72-page, 425-paragraph, 20,580-word Complaint, it is important to remember that "[s]tandards of pleading are not the same as standards of proof." Phillips v. Cnty. of Allegheny, 515 F.3d 224, 246 (3d Cir. 2008).[34] It is "worth reiterating that, at least for purposes of pleading sufficiency,

[34] This has long been the law. See Weston v. Pa., 251 F.3d 420, 429 (3d Cir. 2001)(complaints "need not plead law or match facts to every element of a legal theory.").

a complaint need not establish a *prima facie* case in order to survive a motion to dismiss" because that is "an evidentiary standard, not a pleading requirement and hence is not a proper measure of whether a complaint fails to state a claim." Connelly, 809 F.3d at 788-89 (cleaned up). "Instead of requiring a *prima facie* case, the post-Twombly pleading standard simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of the necessary elements." Id. at 789 (cleaned up). Thus, even assuming *arguendo* that Plaintiffs have not exhaustively proven one of the four *prima facie* elements, it is irrelevant since this is an evidentiary standard, not a pleading requirement.

III. EVICTING PLAINTIFFS FROM THEIR HOME WAS OBJECTIVELY UNREASONABLE UNDER THE FOURTH AMENDMENT.

A. Standard of Review.

The standard of review is plenary. (See Argument **I.A.** above).

B. An Eviction is a Fourth Amendment Seizure Governed by the Reasonableness Test.

The Supreme Court has squarely held that a civil home eviction is a seizure which triggers traditional Fourth Amendment analysis. Soldal v. Cook County, Ill., 506 U.S. 56, 61, 69 (1992). As a result, because of the plain text of the Amendment, "reasonableness is still the ultimate standard." Id. at 71. It is undisputed that Plaintiffs were evicted from their Home by the Constable

Defendants. So the question becomes whether their eviction was objectively reasonable under the circumstances.

C. Courts Have Recognized that a Magistrate's Order Should Not Be Enforced if the Surrounding Circumstances Demonstrate Objective Unreasonableness.

The ancient common law presumption that a judicial order immunizes objectively unreasonable conduct does not apply under § 1983. See Merkle v. Upper Dublin Sch. Dist., 211 F.3d 782, 789 (3d Cir. 2000)("the common law presumption raised by a magistrate's prior finding that probable cause exists does not apply to section 1983 actions.").

Instead, the case law recognizes numerous circumstances where a court issued warrant or other judicial order should not be enforced. The Supreme Court has rejected the view that a law enforcement officer "is entitled to rely on the judgment of a judicial officer ... [in] issuing the warrant." Malley v. Briggs, 475 U.S. 335, 345 (1986). The Court explained that such a -

> view of objective reasonableness is at odds with our development of that concept in Harlow [v. Fitzgerald, 457 U.S. 800 (1982)] and [U.S. v.] Leon, 468 U.S. 897 (1984)]. In Leon, we stated that "our good-faith inquiry is confined to the objectively ascertainable question whether a reasonably well-trained officer would have known that the search was illegal despite the magistrate's authorization."

Malley, 475 U.S. at 345 (quoting Leon, 468 U.S. at 922 n.23). Also in Leon, the Supreme Court explained that "depending on the circumstances of the particular

case, a warrant may be so facially deficient—i.e., in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid." 468 U.S. at 923. Building on these same precedents, this Court also has held that -

> an apparently valid warrant does not render an officer immune from suit if his reliance on it is unreasonable in light of the relevant circumstances. Such circumstances include, but are not limited to, other information that the officer possesses or to which he has reasonable access, and whether failing to make an immediate arrest creates a public threat or danger of flight.

Berg v. Cnty. of Allegheny, 219 F.3d 261, 273 (3d Cir. 2000)(citing Malley, 475 U.S. at 345).

The Supreme Court has explained 'why' this is the proper approach, finding-

> It is true that in an ideal system an unreasonable request for a warrant would be harmless, because no judge would approve it. But ours is not an ideal system, and it is possible that a magistrate, working under docket pressures, will fail to perform as a magistrate should.

Malley, 475 U.S. at 345-46. "We find it reasonable to require the officer ... minimize this danger by exercising reasonable professional judgment." Id. at 346. Stated another way, the question is always whether a "reasonably well trained officer should rely on the warrant" under the circumstances. Leon, 468 U.S. at 923.

D. Our Facts Show Objective Unreasonableness.

So although enforcing a court order is an interest entitled to weight, it must still be balanced against the many interests and facts on the other side of the scale. Ours is not a case where:

- a defendant "reasonably mistake[s] a second party for the first party," compare Hill v. California, 401 U.S. 797, 802 (1971);
- the name on the order matches that of the person being arrested because of a clerical error, compare Berg, 219 F.3d 267-68;
- the person arrested is the father with the same name of the person being sought, the son, compare Noone v. City of Ocean City, 60 Fed.Appx. 904, 906 (3d Cir. 2003); or
- the first and last names of unrelated persons are identical, with only the middle initial differing. Compare Rothermel v. Dauphin Cnty. Pa., 861 Fed.Appx. 498, 502 (3d Cir. 2021).

Nor is this a case where questions were only belatedly raised, long after-the-fact. Instead, they were contemporaneously brought to Defendants' attention.

Although duplicative of many of the facts already addressed above, the twenty-six bullet points addressing objective unreasonableness of evicting the wrong person are listed in detail in the Complaint. (¶ 420; JA190-92). Briefly, those include actual knowledge by the Constable Defendants that:

- they were evicting the wrong family;
- the family had a "legitimate" lease and government issued documentation establishing this was their Home;
- the family had not received any prior notice of the eviction, or an

opportunity to challenge it;

- the only adult was blind, triggering the protections of the ADA;
- the only notice previously posted or mailed to the home was not in braille;
- the eviction Order was captioned with and repeatedly named an adult female, but the family at the Home consisted solely of an adult male and two minor females. No adult female was present and it was explained that the wife/mother was several years deceased, the urn containing her ashes visible from the door and pointed out to them; and
- two persons who did not live in the Home explained to the Constables that the Murphy family really did live there.

In light of these facts, one Constable even told the others that he would "take the fall for it," reflecting consciousness of wrongdoing and knowledge he was doing something so improper that someone would have to "take the fall."

Finally, given the ADA requires: (1) all legal notices be in a form the disabled person can read and understand, yet here it was not; and (2) the Constables make reasonable accommodations to blind persons, yet here they made none; it cannot be objectively reasonable to act contrary to such a long and clearly established federal statutory law.

> [A]n officer's legal mistakes will not preclude a Fourth Amendment violation. While an officer may make an objectively reasonable factual mistake, a failure to understand the law by the very person charged with enforcing it is <u>not</u> objectively reasonable.

U.S. v. Herrera, 444 F.3d 1238, 1246 n.9 (10th Cir. 2006) (cleaned up) (emphasis in original).

IV. QUASI-JUDICIAL IMMUNITY DOES NOT APPLY.

A. Standard of Review.

The standard of review is plenary. (See Argument **I.A.** above).

B. The Decision Below.

The decision below held that quasi-judicial immunity applied to the individual § 1983 violations above because the Constables were not acting in a manner inconsistent with their legal duties under Delaware statutory law. (Op. at 17-20; JA21-24).

C. The Limits of Quasi-Judicial Immunity.

In Russell v. Richardson, 905 F.3d 239, 250-51 (3d Cir. 2018), this Court denied immunity to a court marshal executing a facially valid, Virgin Island Superior Court order and identified three limits on quasi-judicial immunity. It does not apply:

(1) where the case challenges "the manner in which [a court order] is executed," rather than the order itself, id. at 250;[35]

(2) where the officer violates the "implicit caveat that the officer follow

[35] This Court grounded its holding in the settled common law doctrine that court officers are liable for "carelessness or negligence" in the "manner" in which they execute such orders. Id. at 248.

the Constitution in executing" the order, id. at 250 (cleaned up); and

(3) where the officer's actions are not "consistent with the appropriate exercise of [the officer's] functions." Id. at 251 (quoting Forrester v. White, 484 U.S. 219, 224 (1988)).

See In re Toppin, 645 B.R. 773, 784 (E.D.Pa. 2022) (reading Russell to recognize these three limits). This Court refused the invitation to immunize an officer's actions "regardless [of] how less-than-perfect those actions may be" in staying within the limits of the officer's legal responsibilities. Russell, 905 F.3d at 251.

Relying on Russell, the Eastern District denied immunity to a sheriff seeking to execute a facially valid, Philadelphia Court of Common Pleas writ of eviction and possession after he posted and placed multiple eviction notices on and at the home of the physically disabled, deaf and mute tenant. Toppin, 645 B.R. at 784-85. The court noted that key factual circumstances requiring the denial of quasi-judicial immunity included that the sheriff acted even after being put on notice that his actions violated a federal statute, and that he violated his office's own policy. Id. at 779, 781, 785-86.

D. Defendants' Actions Disqualified Themselves from Immunity.

All three limits to immunity apply in our case for overlapping reasons. Briefly, Defendants proceeded with the eviction despite actual knowledge they were evicting the wrong family. As the district court recognized at oral argument,

even in executing a facially valid death warrant the state executioner still has to stop the execution when they realize they have the wrong person strapped down in the chair. (Tr. at 55-56; JA87-88). In the same way, a court constable has to stop executing an eviction order when they realize they are throwing the wrong family out of their home and onto the street. Fundamental constitutional protections under the Fourteenth ("property" and "liberty") and Fourth ("houses" and "effects") Amendments demand no less.

The Constables are even trained in these constitutional protections. As a condition of employment, they swear to uphold the U.S. and Delaware Constitutions.[36] Given they carry deadly weapons (¶¶ 45, 50, 55, 306, 13-15, 89; JA133,174,127-28,137), and are authorized to use of deadly force, it is not surprising that the Delaware General Assembly requires[37] they receive mandatory training in:

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[36] 29 Del.C.§ 5102; see also Del.Const. Art. XIV, § 1; 29 Del.C. § 5101; In re Request of Governor for Advisory Op., 722 A.2d 307, 310-13, 318-19 (Del. 1998).

[37] See 10 Del.C. § 2806 ("a justice of the peace constable must meet the minimum standards established by the Police Officer Standards and Training Commission for part-time police officers..."). Those standards are found in the Delaware Administrative Code. See 1 Del.Admin.C. § 801-2.0 (part-time officers "must account for all mandatory COPT [Council on Police Training] training requirements"); Id. at § 801-15.1 (setting forth the "Basic Mandatory Curriculum").

- "the history and development of the Federal and State Constitutions, particularly the Federal Bill of Rights, as interpreted by the courts down through the years, with emphasis on decisions of the [U.S.] Supreme Court[]," 1 Del.Admin.C. § 801-15.5;

- "the law enforcement role of protection of life and property," id. at § 801-15.4;

- "the legal foundation of laws governing and limiting the police officer's authority....," id. at § 801-15.24.1;

- "the laws of arrest with or without warrants," id.; and

- "the laws of search and seizure under the provisions of the 4th and 14th Amendments including ... the elements of a 'reasonable' search and seizure of persons." Id. at § 801-15.24.2.

Similarly, for reasons also addressed at length above, the ADA requires that all notices to blind persons be in braille. Delaware courts claim to have a policy of strict ADA compliance. (Facts at **E.4.**). But the ADA dictates that once the Constables realized Plaintiff was blind, they were required to stop the eviction until they could provide him with an ADA compliant notice and opportunity to be heard before seizing his Home. Proceeding with the eviction anyway despite the lack of ADA compliant notice violated the J.P. Court's own professed policies as well as federal law, akin to the circumstances removing quasi-judicial immunity addressed in Toppin.

Moreover, the individual Defendants knew they were breaking these laws. That is why Defendant Brison explicitly told his co-Defendants that he would

"take the fall for it." (Facts at **B.3.h.**). For the totality of reasons above, Defendants' actions in violation of fundamental statutory protections, several constitutional rights as well as the J.P. Court's own rules and policies, are far from "consistent with the appropriate exercise of [their] functions." Russell, 905 F.3d at 251. The District Court's conclusion to the contrary is legal error.

CONCLUSION

For the reasons set forth above, the lower court's decision below should be reversed in all respects.

Respectfully Submitted,

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CERTIFICATE OF BAR MEMBERSHIP

I certify that I am a member of the bar of the United States Court of Appeals for the Third Circuit.

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed.R.App.P. 32(a)(7)(c), I certify, based on the word-counting function of my word processing system (Word Perfect 2020), that this brief complies with the type-volume limitations of Rule 32(a)(7)(B), in that the brief is prepared in a 14-point, proportional format (Times New Roman) and contains fewer than 13,000 words, to wit, no more than 12,994 words.

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