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.

REPLY 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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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. This Issue Must Be Addressed.

The defense request that this Court turn a blind eye to the clear due process problems this case presents (AB at 34), fails for at least two independent reasons.

1. The Due Process and ADA Issues Are Intertwined Under the Fourteenth Amendment.

Under the facts of our case, the legal issues addressed by the interrelated due process and ADA counts are inseparable since the ADA issues are tied up in and necessarily build upon due process.[1] Because due process issues are integral to the ADA analysis, the latter cannot be understood without the former.

Briefly, while the authority to enact Titles I-III of the ADA flows primarily from Congressional enforcement power under § 5 of the Fourteenth Amendment to prophylactically protect § 1 equal protection interests, our Title II case involves underlying factual conduct which independently violates the Due Process Clause

[1] (See tr. at JA67,70 - "the ADA builds on the due process ... because notice to a blind person has to be in braille because of the ADA").

of § 1 also since it involves the right of access to the courts.[2] As addressed throughout the Opening Brief, "[t]he ADA compliant 'notice' issues in this case are intertwined with Fourteenth Amendment due process principles on a fundamental level." (OB at 42). The Supreme Court here has explained that in addition to enforcing the "disability discrimination" prohibition, "Title II ... also seeks to enforce a variety of other basic constitutional guarantees" including "the right of access to the courts at issue in this case, that are protected by the Due Process Clause...." Lane, 541 U.S. at 522-23. In other words, the blind always get procedural due process when interacting with courts – the Constitution and ADA combine to require this.[3]

The due process compliant "notice" required to (1) establish the court's personal jurisdiction over a person, and also later (2) take that same person's constitutionally fortified Home away from them, has to be understood as the legal baseline from which the ADA's "reasonable accommodation" mandate is thereafter necessarily measured. In ADA terms, it is one of the thirteen

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[2] See Tennessee v. Lane, 541 U.S. 509, 518-34 (2004); U.S. v. Georgia, 546 U.S. 151, 158-60 (2006).

[3] Defense efforts (AB at 14-16) to distinguish Geness v. Cox, 902 F.3d 344 (3d Cir. 2018), fail since the "same [factual] circumstances," id. at 363, of denying protections of the justice system to that disabled plaintiff were found to violate both the interrelated protections of due process, id., and the ADA. Id. at 362.

specifically identified (OB at 14-16), "services, programs, or activities of a public entity," 42 U.S.C. § 12132, that were denied Plaintiff. Only once that foundation and baseline is established can this Court do what Congress, in overwhelming fashion,[4] required and enforce "Title II's affirmative obligation to accommodate persons with disabilities in the administration of justice." Lane, 541 U.S. at 533.

2. This Issue Was Briefed, Argued and Addressed Below.

Ours is not a case where the due process issue was not addressed below and is being raised for the first time on appeal. Instead it was extensively addressed in multiple rounds of briefing over the course of two years and seven months so there are no questions of waiver or forfeiture.

Defendants twice formally moved and briefed the due process count, arguing "Plaintiffs failed to allege facts establishing that the Constables actions violated their Constitutional rights under [ ] the ... Fourteenth Amendment[]" (D.I. 21 at 16; accord D.I. 31 at 16; JA30-31), and claimed "[t]he Constables themselves provided more notice than was required." (D.I. 21 at 17; JA30). Plaintiffs twice briefed their opposition. (D.I. 22 at 16-17; D.I. 33 at 14-16; JA30, 33). At oral argument, the District Court adopted the defense position and clearly

[4] See Lane, 541 U.S. at 516 ("The ADA was passed by large majorities in both Houses of Congress"); www.congress.gov/bill/101st-congress/senate-bill/933/all-actions (more than 93% support).

articulated its legal view that Plaintiffs' due process count was "really bad" and "easily dismissed." (OB at 17-18). That the lower court did not later repeat itself takes nothing away from that fully briefed issue.

3. This Court's Standards Are Met.

All of the above meets this Court's test allowing pure issues of law to be addressed on appeal, even when the lower court declined to formally rule in writing. See, e.g. Mirza v. Ins. Adm'r of Am., Inc., 800 F.3d 129, 133 n.4 (3d Cir. 2015) ("It is generally appropriate for an appellate court to reach the merits of an issue not decided by the district court if the factual record is developed and the issues provide purely legal questions, upon which an appellate court exercises plenary review")(cleaned up); Ingram v. Experian Info. Sols., Inc., 83 F.4th 231, 240 n.5 (3d Cir. 2023)(the Court may "consider pure questions of law which are closely related to arguments that the parties did raise and for which no additional fact-finding is necessary")(cleaned up).

Our facts are well-developed as detailed in the closed factual record contained in the 72-page, 425-paragraph, 20,580-word First Amended Complaint; while due process, like all constitutional questions, receives *de novo* review. See Cabrera v. Att'y Gen. United States, 921 F.3d 401, 403 n.2 (3d Cir. 2019)("We review constitutional claims *de novo*."). There is no bar to addressing due

process, all the more so given how integrally related it is to the statutory ADA issues this appeal squarely presents.

B. What Is Not Contested.

The defense by silence makes clear it is uncontested that Plaintiffs have:

- weighty and historic liberty interests both in their Home and in the requirement of personal jurisdiction, (OB at 19-23);
- fourteen state law property interests, (OB at 23-25);
- established that one of the very reasons due process exists is to prevent "mistaken deprivations of property," (OB at 27-28); and
- satisfied the three part test of Mathews v. Eldridge, 424 U.S. 319, 335 (1976), establishing multiple violations of the "absolute" right to due process of law by the Defendants. (OB at 25-32).

C. Key Concession - a "Genuinely Invalid Eviction Notice."

Notably, for the first time in more than 3 ½ years of litigation, the defense appears begrudgingly to finally concede that the eviction notice used to seize Plaintiffs' Home was "genuinely invalid." (AB at 16). Plaintiffs concur.

D. What is Contested.

1. The "Evict First, Ask Questions Later" Policy or Practice.

Factually, the defense disregards the standard of review and simply denies that this policy or practice exists. (AB at 23-28). But such a claim ignores the

well-pled factual allegations in the Complaint, facts that were subsequently confirmed and bolstered by three internal written reports, produced by prior defense counsel, in which the three individual defendants factually memorialized the incident and confirmed its factual existence. (OB at 10-12, 7-9, 32-33).

Legally, the defense claims that the mere existence of the Delaware Landlord-Tenant Code "conclusively shows" (AB at 27) that no such policy or practice can exist as a matter of law. But "the existence of written policies of a defendant are of no moment in the face of evidence that such policies are neither followed nor enforced." Ware v. Jackson Cnty., 150 F.3d 873, 882 (8th Cir. 1988). In a variety of contexts, this Court has similarly long rejected pleas that a written law or formal policy insulates an illegal practice or custom to the contrary.[5]

2. Ex Parte Young.

On different grounds than addressed below, the defense now argues that the "evict first, ask questions later" policy no longer exists since the pandemic has

[5] See, e.g. Anela v. City of Wildwood, 790 F.2d 1063, 1067 (3d Cir. 1986) (rejecting the claim that a defendant is not responsible for a practice that was illegal under state law and explaining the "City established a practice contrary to [the law] and must bear responsibility therefor."); Sample v. Decks, 885 F.2d 1099, 1116 (3d Cir. 1999)(in the summary judgment context, holding "custom and practice can provide a basis for liability ... if the official can realistically be said to have approved the displacement of the *de jure* system with whatever the offending custom or practice is found to be."); Est. of Roman v. City of Newark, 914 F.3d 789, 798 (3d Cir. 2019)(a plaintiff is not "required to prove that the custom had the City's formal approval" in order to survive a motion to dismiss).

ended. (AB at 26). Plaintiffs disagree.

First, the fair import of the Defendants' own internal written reports is that the policy is a wide-ranging one and exists outside the context of the pandemic itself. Indeed, on appeal, Defendants continue to insist that they have the absolute right to take away a person's constitutionally fortified Home while executing an eviction, even when they have actual knowledge they have the wrong family and that the family has not received any due process (or ADA) compliant notice whatsoever. Defendants' own long held litigation position thus factually confirms the existence of this policy or practice.

Second, although Plaintiffs acknowledge that Delaware's Governor eventually terminated the Public Health Emergency,[6] the World Health Organization has nevertheless concluded that the pandemic itself is still ongoing.[7] So the circumstances surrounding the existence of the policy and practice still exist now, more than 3 ½ years after this case was originally filed.

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[6] See https://governor.delaware.gov/wp-content/uploads/sites/24/2023/05/Termination-of-the-Public-Health-Emergency.pdf

[7] See https://www.who.int/europe/emergencies/situations/covid-19 (noting the pandemic is not over); https://time.com/6898943/is-covid-19-still-pandemic-2024/ ("The WHO continues to describe COVID-19 as a pandemic on its website.").

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. The Legal Question at the Center of this Case - Is the J.P. Court Entity Responsible For the Actions of Its Employees?

Review of page 16, lines 8-16, of the defense brief reveals the crux of the legal dispute at the center of the ADA portion of this appeal. There the defense suggests that the only employees of the Justices of the Peace Court system Defendant who must comply with the ADA are its 60 magistrate employees, not its hundreds of other employees who regularly interact with the disabled, and non-disabled, public.

The question becomes whether this Court should accept the defense invitation to upend settled agency principles and hold that an employer is not responsible for the actions of its public-facing employees that deprive citizens of their statutorily-grounded civil rights?[8]

[8] In cases against both public and private employers, including law enforcement, the Delaware Supreme Court has held that settled agency law requires vicarious liability when, *inter alia*, the employee acts within the scope of their job duties. See Sherman v. State Dep't of Pub. Safety, 190 A.3d 148, 154-89 (Del. 2018)(en banc)(on-duty police officer); Hecksher v. Fairwinds Baptist Church, Inc., 115 A.3d 1187, 1199-1209 (Del. 2015)(en banc)(on and off duty private school teachers); Doe v. State, 76 A.3d 774, 776-77 (Del. 2013)(en banc) (on-duty police officer); see also Restatement (Second) of Agency § 228 (1958).

1. This Issue Was Briefed Below.

As already noted (OB at 40-41), at oral argument on the first defense motion to dismiss the District Court zeroed in on this same vicarious liability issue, identified it as crucial to resolution and directed the parties to address it. (Tr. at JA90-97, 102-04, 72-74). Plaintiffs did so at length in the First Amended Complaint (¶¶ 296-339; JA172-78), and also in the second round of briefing. (D.I. 33 at 9-11; D.I. 35 at 1-2; JA32). But the reargued issue was not expressly addressed in the later written decision.

2. Vicarious Liability Under Discrimination Statutes.

It is settled law in our Circuit that individual employees cannot be sued as defendants under similar civil rights statutes, leaving their employers as the only possible defendant left to fulfill the will of Congress in providing accountability for the discriminatory actions of those same employees. The seminal case in this regard is this Court's decision in Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1077-78 (3d Cir. 1996)(en banc), holding this in the context of Title VII of the Civil Rights Act of 1964. The same result was reached under the Age Discrimination in Employment Act, see Hill v. Borough of Kutztown, 455 F.3d 225, 246 n.29 (3d Cir. 2006), and Titles I and III of the ADA. See Fasano v. Fed. Rsrv. Bank of N.Y., 457 F.3d 274, 289 (3d Cir. 2006)(Title I); Emerson v. Thiel

Coll., 296 F.3d 184, 189 (3d Cir. 2002)(Title III).

3. Every District Court in the Third Circuit Agrees Vicarious Liability Also Applies Under Title II.

Although this Court recently noted it has not addressed the question of individual versus employer only liability under Title II,[9] numerous other courts have logically observed that the employer is the only other possible defendant who can be held liable if employees cannot be sued individually for their own actions.[10] Indeed, this is the conclusion of every district court throughout the Third Circuit.

> [E]very district court judge in our Circuit confronted with this question has determined public entities are vicariously liable for the conduct of their employees under Title II of the [ADA].

Geness v. Pa., 503 F.Supp.3d 318, 339 (W.D.Pa. 2020) (citing cases).[11]

Moving outside our Circuit, numerous courts, including circuits[12] and

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[9] See Durham v. Kelley, 82 F.4th 217, 224 n.12 (3d Cir. 2023)("This Court has not squarely addressed the question of whether claims may be brought against government officers in their individual capacities under Title II of the ADA.").

[10] See, e.g. Latham v. Acton, 2020 WL 6122941, *8 n.81 and *6 (D.Alaska Oct. 9, 2020).

[11] See, e.g. Miretskaya v. Rutgers State Univ. of N.J., 2022 WL 3020153, *6 (D.N.J. July 29, 2022); Waters v. Amtrak, 456 F.Supp.3d 666, 671 (E.D.Pa. 2020); Gillette v. Prosper, 2020 WL 5237513, *7 n.7 (D.V.I. Sept. 2, 2020); Ali v. City of Newark, 2018 WL 2175770, *5 (D.N.J. May 11, 2018); Stevenson v. Pierce, 2017 WL 1454993, *3 (D.Del. Apr. 20, 2017); Guynup v. Lancaster Cnty., 2008 WL 4771852, *1 (E.D.Pa. Oct. 29, 2008).

[12] See, e.g. Downey v. Snohomish Cnty. Sheriff's Office, 2022 WL 1135417, *1 (9th Cir. Apr. 18, 2022); Gray v. Cummings, 917 F.3d 1, 17 (1st Cir.

districts,[13] have similarly held vicarious liability applies under Title II.

4. The ADA is a Remedial Statute to be Broadly Construed.

The remedial purposes and related statutory findings of Congress when enacting the ADA were addressed in the earlier brief. (OB at 34). This Court has similarly long held in the Title II context that the "ADA is a remedial statute, meant to bring an end to discrimination against individuals with disabilities in all aspects of American life; it must be construed with all the liberality necessary to achieve such purposes." Disabled in Action of Pa. v. Se. Pa. Transp. Auth., 635 F.3d 87, 94 (3d Cir. 2011); see Menkowitz v. Pottstown Mem'l Med. Ctr., 154 F.3d 113, 118 (3d Cir. 1998)("there is little doubt that Congress intended the ADA as a comprehensive remedial statute with broad ramifications."); Berardelli v. Allied Servs. Inst. of Rehab. Med., 900 F.3d 104, 123 (3d Cir. 2018)("[w]e

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2019); T.W. v. Sch. Bd. of Seminole Cnty., Fl., 610 F.3d 588, 604 (11th Cir. 2010); Delano-Pyle v. Victoria Cnty., Tex., 302 F.3d 567, 574-75 (5th Cir. 2002); Duvall v. Cnty. of Kitsap, 260 F.3d 1124, 1141 (9th Cir. 2001); Rosen v. Montgomery Cnty. Md., 121 F.3d 154, 157 n.3 (4th Cir. 1997).

[13] See, e.g. A.K.B. By & Through Silva v. Indep. Sch. Dist. 194, 2020 WL 1470971, *9 (D.Minn. Mar. 26, 2020)(noting "every circuit court considering the issue of vicarious liability under these statutes has held that a public entity can be held vicariously liable."); A.V. through Hanson v. Douglas Cnty. Sch. Dist. RE-1, 586 F.Supp.3d 1053, 1067 (D.Colo. 2022); Mullen v. Board of Comm'rs. of the Cnty. of Adams, 2022 WL 17261428, *4-5 (D.Colo. Nov. 29, 2022); Hall v. City of Walnut Creek, 2020 WL 1694359, *4 (N.D.Cal. Apr. 7, 2020); Boynton v. City of Tallahassee, 2015 WL 12938932, *3 n.3 (N.D.Fla. May 14, 2015).

therefore decline to depart from our usual rule of construing anti-discrimination statutes such as the RA to comport with their broad remedial purposes")(cleaned up).

Given that the plain text of a remedial statute like the ADA allows for damages and other remedies, see 42 U.S.C. § 12133, it is clear that there must be a defendant to seek those remedies against. If individual public employees cannot be sued, that logically leaves only the public employer.

5. The Meaning of the Plain Statutory Text.

Title II defines "public entity" to include "any State ... government" and "any department, agency, ... or other instrumentality of a State ... government." 42 U.S.C. § 12131(1). It covers all "of the services, programs, or activities of a public entity." Id. at § 12132.

a. The Many Regulations & DOJ Publications.

Preliminarily, the defense invites legal error by suggesting that the many relevant protective Department of Justice regulations and technical assistance publications be ignored. (AB at 17). First, Congress specifically empowered the DOJ to provide these things to aid expansive enforcement of the ADA's remedial protections. See id. at § 12134(a) ("shall promulgate regulations ... that implement this part."); id. at § 12206(c)(1) (authorizing such "technical assistance"); id. at §

12206(c)(2)(B)(i) ("shall implement"); id. at § 12206(c)(3) (mandating the formal "technical assistance manuals").

Second, this Court has repeatedly relied upon these in its own ADA decisions. See, e.g. Le Pape v. Lower Merion Sch. Dist., 103 F.4th 966, 979 (3d Cir. 2024)(relying upon requirements solely set forth in the regulations in determining the requirements of Title II); id. at 981 (as in our case, also materially relying upon 28 C.F.R. § 35.160); Berardelli, 900 F.3d at 110, 119-24 (addressing and relying on such regulations).

These cannot be ignored.

b. "All Services" Provided by "All of Its Employees."

"Title II ... is extremely broad in scope and includes anything a public entity does," Furgess v. Pa. Dep't of Corr., 933 F.3d 285, 289 (3d Cir. 2019)(cleaned up); accord 28 C.F.R. Pt. 35, App. B, § 35.102, including "all services, programs, and activities provided or made available by public entities." 28 C.F.R. § 35.102. This includes the actions of "all of its employees." 28 C.F.R. Pt. 35, App. B, § 35.107 (noting "a public entity's obligation to ensure that all of its employees comply with the requirements of this part"). In light of this, it is not surprising that the Supreme Court concluded "Title II ... reaches a wide array of official conduct in an effort to enforce an equally wide array of constitutional guarantees,"

Lane, 541 U.S. at 530, such as personal jurisdiction and notice herein. One of the "major categories of programs or activities covered" are "those involving general public contact as part of the ongoing operations of the entity." 28 C.F.R. Pt. 35, App. B, § 35.102.

Thus it is clear the ADA's protections apply not just to the 60 magistrate employees of Defendant back at the courthouse, but also to all of its many other employees, including Constables serving court papers who interact with the general public on the doorstep of their constitutionally fortified Home.

c. "Staff Training" is "Critical" to Prevent Disability Discrimination in Government Services.

Review of the DOJ's Title II Technical Assistance Manual Covering State and Local Government Programs and Services, archive.ada.gov/taman2.htm ("Manual"), and its repeated use of the words "staff,"[14] and "employee,"[15] also makes clear it is expected that state and local governments are to be held accountable for the actions of their employees.

No doubt this is why the DOJ repeatedly emphasizes the critical importance of training public-facing employees in order to prevent discrimination against disabled members of the public with whom they interact. For example -

[14] (Id. at 9, § II-2.6000; at 21, § II-5.2000; at 35, § II-7.1200).

[15] (Id. at 33, § II-7.1000; at 35, § II-7.2000; at 39, § II-8.2000).

> A critical and often overlooked component of ensuring success is comprehensive and ongoing staff training. Covered entities may have established good policies, but if front line staff are not aware of them or do not know how to implement them, problems can arise.

USDOJ, ADA Requirements: Effective Communication 7 (Jan. 2014), archive.ada.gov/effective-comm.pdf ("Requirements"); accord USDOJ, ADA Update: A Primer for State and Local Governments 15 (2015), archive.ada.gov/regs2010/titleII_2010/titleII_primer.pdf ("Primer"). Similarly -

> A review should be made to ascertain whether measures have been taken to ensure that employees of a public entity are familiar with the policies and practices for the full participation of individuals with disabilities. If appropriate, training should be provided to employees.

Manual at 39, § II-8.2000, item #12.

B. The Actions of Defendant's Employees Violated the ADA.

The Complaint details the state court Defendant's official statement of strict ADA compliance on its public facing website. (See OB at 16). But the rest of the facts detailed in the Complaint - including the Constables' own internal written statements produced by defense counsel - tell a different story, one which demonstrates a troubling disconnect between official policy and every day practice; a complete lack of training of front-line staff and public-facing employees on the requirements of the ADA (as well as interrelated due process notice and personal jurisdiction protections).

1. Actions of the Front-Line Employees.

The exhaustively detailed, well-pled facts in the 20,580-word Complaint demonstrate the Constables' actual knowledge that:

(1) the only adult was blind;

(2) neither he nor his family had received any notice whatsoever that they were in danger of losing their Home;

(3) even that legally defective notice indisputably was not in braille or any other ADA compliant form;

(4) they were evicting the wrong family;

(5) the family had an admittedly "legitimate" lease signed by the landlord; and

(6) they were doing something so illegal such that one Constable - in front of third-party citizen witnesses - felt compelled to state to another that "I will take the fall for it."

(OB at 7-16). So how did the Constable Defendants respond to these undisputed factual circumstances involving what their own counsel belatedly but finally now concedes was a "genuinely invalid eviction notice?"

a. No Attempt at Reasonable Accommodation.

Defendants made no effort to obtain an ADA compliant "notice" in braille for this blind man and his family in order to give them the due process compliant "notice" required before seizing his Home. Nor did they even make any effort to orally explain to this blind man named "William Murphy" how or why a notice to

an unknown stranger named "Viola Wilson" could be used to throw he and his two young daughters out of their Home and onto the street. Indeed, in more than three years of litigation, the state has yet to identify or even attempt to articulate any arguable effort that was made to comply with what even the Delaware Supreme Court calls "the *sine qua non* for ... compliance with the ADA," In re Murphy, 283 A.3d 1167, 1176 (Del. 2022)(cleaned up), the "reasonable accommodation" of this blind man's disability under these circumstances.

A blind widower and his two young daughters are thrown out of their Home in the middle of a snowstorm, in the midst of a statewide COVID shutdown and eviction moratorium, without "notice" as that term has been defined for 809 years, going back to Runnymede in 1215. But constitutional due process to the side, Congress in 1990 overwhelmingly enacted a new statute, the ADA, mandating that meaningful notice to a blind man must be in a form that the blind can read and understand - here braille - and putting the burden of providing this on the state.

In response, the defense protests that blind William Murphy "had enough notice of the proceedings ... addressed to Ms. [Viola] Wilson," the unknown stranger, (AB at 17), and strongly defends the "Constable Defendants' 'decision-making process,"' claiming it cannot even arguably ever be plausibly proven that William's "blindness played any role" whatsoever in the seizure of his Home,

contrary to the requirements of the ADA. (Id. at 21).[16]

But the "notice" of which the defense here speaks is not meaningful due process "notice" at all,[17] and it certainly was not in braille, the bare minimum of what the ADA requires before taking the Home of a blind man. Such defense arguments reflect, in this Court's words, the very type of "thoughtlessness," "indifference," "benign neglect" and "apathetic attitudes" towards the blind 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 v. Choate, 469 U.S. 287, 295-96 (1985)). In the words of the DOJ -

> Many routine policies, practices, and procedures are adopted by public entities without thinking about how they might affect people with disabilities. Sometimes a practice that seems neutral makes it difficult or impossible for a person with a disability to participate. In these cases, the ADA requires public entities to make "reasonable modifications" in their usual ways of doing things when necessary to accommodate people who have disabilities.

Primer at 3. Yet Defendants shamelessly did not do so. Ours is not a case where

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[16] The defense suggestion it is impracticable to provide ADA and due process compliant notice to blind persons in braille before seizing their Home fails at the threshold and makes no effort to carry their heavy DOJ mandated burden "of a written statement of the reasons for reaching that conclusion" that is "made by a high level official, no lower than a Department head." Requirements at 6.

[17] See, e.g. Todman v. Mayor and City Council of Baltimore, 104 F.4th 479, 488-90, 485 (4th Cir. 2024)(when an eviction notice is "misleading and confusing at best," it is not the meaningful legal "notice" required by due process).

we disagree about the reasonableness of the accommodation actually provided under the circumstances. Instead, it is a case where no effort at accommodation was made by the front-line employees at all.

2. Actions of Top Management and Supervisor Chief Constable Garcia.

But of course, ours is not a case solely addressing the actions of poorly trained, public-facing, front-line public employees dealing with the disabled. Instead, the individual Constables actually called the head Constable supervisor for instructions on how to proceed under these circumstances. After fully informing him of the facts, they wrote that "Chief Constable Garcia" specifically instructed them to evict Plaintiffs from their Home anyway, despite Plaintiff Murphy's blindness, the lack of an ADA compliant notice and all the rest of the legally problematic facts above. (¶¶ 127-29,132,134,326-39; JA143-44, 177-78). Defendants' own written words, in their own internal work reports, memorialize they were instructed to do this by their highest level manager and supervisor at the Justices of the Peace Defendant.

So ours is not merely a case of rogue government employees running wild in the field. Instead, as revealed in the Complaint, confirmed in Defendant's own internal reports, and still reflected in the public job postings of the Defendant itself, ours is a case of front-line Constables who "operate under the close

supervision of their supervisors," (¶¶ 320-24; JA176-77), who cleared each and every one of their illegal, ADA violative actions with their highest level boss at their Defendant employer which must now be held accountable for its defiance of Congress.

That none of these facts troubled any of the individual front-line Constables or their Chief Constable manager and top level supervisor speaks to the complete failure of the ADA compliance training that this essential branch of state government has been required to provide to its employees since 1990.[18]

C. Conclusion.

For more than 3 ½ years, the State's running theme has been that this case must yield in the face of defense claims to have purportedly complied with the letter of State of Delaware statutory eviction law when seizing the Home of the blind Plaintiff and his family. But this defense fails since state law does not trump Congressionally enacted disability protections for the blind. This Court's words are *apropos*, "[t]he demands of the federal Rehabilitation Act or ADA do not yield to state laws that discriminate against the disabled; it works the other way around." Gibbs v. City of Pittsburgh, 989 F.3d 226, 230 (3d Cir. 2021)(cleaned

[18] As explained in briefing below (D.I. 33 at 12-14; JA32), the totality of this factual record also more than satisfies the deliberate indifference standard required for compensatory damages. See Durham, 82 F.4th at 225.

up); see id. ("Under the Supremacy Clause, an employer may not shield itself from federal antidiscrimination liability just by saying that it was trying to follow state law."). The Supreme Court also has observed that -

> In the deliberations that led up to the enactment of the ADA, Congress identified important shortcomings in existing laws that rendered them "inadequate to address the pervasive problems of discrimination that people with disabilities are facing."

Lane, 541 U.S. at 526 (quoting S.Rep. No. 101-116, at 18 (1989)). Our case has identified yet another such "shortcoming:" Legal notice in a form that a blind man cannot read or understand is not legal notice at all.

By denying William Murphy a "meaningful opportunity to be heard" and creating "obstacles to [his] full participation in judicial proceedings," Defendant deprived Plaintiff of several of the very due process rights the ADA was intended to protect. Lane, 541 U.S. at 523; see id. at 523-33 (holding Title II a proper exercise of Congressional § 5 authority as it relates to the fundamental right of access to the courts).

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

The defense offers no substantive response to Plaintiffs' Fourth Amendment count and leaves unrebutted the extensive cited case law from both this Court and the Supreme Court, recognizing that even a law enforcement officer is not entitled

to blindly rely on a court order in their hands when reliance under the circumstances is objectively unreasonable. (OB at 49-53). As the Supreme Court has emphasized, ours is not "an ideal system" and an overworked "magistrate, working under docket pressures, will [sometimes] fail to perform as a magistrate should." Malley v. Briggs, 475 U.S. 335, 345-46 (1986). "We find it reasonable to require the officer ... minimize this danger by exercising reasonable professional judgment." Id. at 346. For as the lower court recognized below, "clearly" even the state executioner must stop an execution when they realize they have the wrong prisoner strapped down in the chair. A death warrant naming someone else does not give them a free pass. (Tr. at JA87-88).

IV. QUASI-JUDICIAL IMMUNITY DOES NOT APPLY.

A. Constitutional Training is Not Contested.

The defense does not contest that the Delaware General Assembly has by statute mandated that all Justices of the Peace constables receive the same training required of Delaware police officers, including detailed legal training addressing federal and state constitutional protections, specifically:

- "the 4th and 14th Amendments;"
- "the legal foundation of laws governing and limiting the police officer's authority;"
- "the law enforcement role [in] protection of ... property;"

- when a seizure is "reasonable;" and
- with "emphasis on decisions of the Supreme Court."

(OB at 55-56).

Because of this undisputed training, police officers and constables are not treated as mindless automatons when it comes to respecting the constitutional rights of the citizenry. Indeed, that is presumably a part of the foundation of the "implicit caveat that the officer follow the Constitution in executing" a court order. Russell v. Richardson, 905 F.3d 239, 250 (3d Cir. 2018) (cleaned up). Because they received legal training in these things, Constables herein did not get to purposefully blind themselves once they realized they were dealing with the wrong family, led by a blind person who had not received constitutionally mandated notice, much less notice in braille, and yet nevertheless proceed with seizing a constitutionally fortified Home anyway.

That training is why Defendant Brison actually told his fellow Constables that he would "take the fall for" what they were doing. (OB at 9-10, 52, 56-57). His own words reveal his state of mind, he knew what they were doing violated the Constitution. And no police officer, no constable ever has discretion to violate the constitution he took a solemn oath to uphold. See, e.g. Cole v. Richardson, 405 U.S. 676, 682 (1972) ("The oath of constitutional support requires an individual

assuming public responsibilities to affirm ... that he will endeavor to perform his public duties lawfully."). No doubt this is why originally the defense in the first lengthy round of motion to dismiss briefing, while raising a veritable host of immunities and other challenges, chose not to even raise quasi-judicial immunity. (See D.I. 20-21, 26; JA30-31).

B. State Law Also Requires "Special Training" to Ensure "Responding Appropriately" to Persons with Disabilities.

Calling basic Supremacy Clause principles mandating ADA compliance a "flawed premise," (AB at 33), the defense suggests that the ADA's requirements for interacting with disabled members of the public are foreign concepts to law enforcement in Delaware, entirely irrelevant to the execution of their day-to-day duties. But even putting the ADA to the side, more than 18 years ago the General Assembly unanimously enacted "special training" requirements in this regard.[19] These include special training "to assist them in identifying ... and in responding appropriately to situations involving persons having a ... physical disability." 11 Del.C. § 8405(c). A necessary part of their every day duties under state law is "responding appropriately" to situations involving the blind. Herein fundamental due process notice that actually notifies was the only way to "respond[]

[19] See Synopsis of H.B. 443, 143rd Gen.Ass., 2nd Sess., 75 Del. Laws. Ch. 292 (Del. 2006) ("This bill will require special training for police officers concerning individuals with a ... physical disability.").

appropriately" as Delaware statutory law requires. They should have stopped and provided proper notice to a blind person. But this they did not do.

C. Numerous Violations of the Landlord-Tenant Code.

Repeated defense claims of full compliance with the Landlord-Tenant Code also are inaccurate. First, as the defense acknowledges (AB at 6), the writ of possession statute requires "at least 24 hours' notice to the person or persons to be removed." 25 Del.C. § 5715(b).

But again, regardless of the form,[20] a "notice" that:

1. is literally addressed to a person named "Viola Wilson;"[21]

2. is captioned in a specifically identified lawsuit, with its own 10-digit case number, in a public court, that identifies the sole defendant as named "Viola Wilson," and no one else;

3. identifies that same defendant "Viola Wilson" by a specific, 7-digit party identification number; and

4. states a "judgment" was entered in that same lawsuit months earlier "against Viola Wilson;"

is not "notice" in any way, shape or form to the "person or persons to be removed," id., here a different and unrelated third person named "William

[20] As previously noted (OB at 12-13), one Defendant's internal report memorialized that the "eviction letter" was mailed to the Home, while another stated it was "posted" to the door.

[21] Which is why Constable Brison stated, "You don't look like a Viola Wilson to me." (¶ 57; JA134).

Murphy," not involved in, party to or ever served in that specific lawsuit.

Both Delaware and federal law are clear that this is not legal "notice" even to a sighted person named "William Murphy." (OB at 27-30). The Delaware Supreme Court has specifically held that a state agency that fails to give "the statutorily required notice" cannot establish a Delaware court's personal jurisdiction over an individual as required to take any actions impacting their legal rights because even "actual knowledge of a lawsuit does not excuse a failure to give statutorily mandated notice." Showell v. Div. of Fam. Servs., 971 A.2d 98, 102 (Del. 2009). And, finally, this "notice" to a blind person also was not in braille as the ADA has required for 34 years.[22]

Second, the very same statute states that "the issuance of a writ of possession [is] for the removal of a tenant." 25 Del.C. § 5715(d). Again, as already noted, (OB at 24 n.11), "tenant" is a defined term, id. at § 5141(38), referring here to the person being sued by the landlord for breach of their rental "agreement," id. at § 5715(d), the person repeatedly named in the above referenced "notice." The identity of the person being removed matters under the statutory scheme, it is not a blanket removal power.

Finally, and relatedly, the summary possession requirements of 25 Del.C. §

[22] These ADA requirements were not foreign to the Delaware legislature as it specifically defined disability by citing the ADA. See 25 Del.C. § 5141(8).

5715 also assume that all of the many earlier provisions of the Code were met. "Tenant," "Landlord," and "Rental Agreement" all are defined terms, see id. at § 5141, that the detailed entirety of Chapters 51, 53, 55 and 57 of Title 25 of the Delaware Code act and repeatedly build upon.

But when the Constables realized they had the wrong family, the wrong person, a blind person, with no due process compliant notice, with no ADA compliant notice, with no 11 Del.C. § 8405(c) compliant notice, no "service" on the "tenant" being sued under 25 Del.C. § 5113, a family with what Defendants themselves described as a "legitimate" lease signed by the landlord, they had to stop because the Code had not been complied with and they had no power or authority over such a person because due process protections under the Fourteenth Amendment and seizure protections under the Fourth trump any arguable interpretation of a court Order to the contrary.

CONCLUSION

It is hornbook constitutional law that the government cannot seize someone's Home without prior notice. If that person is blind, the ADA requires that notice must be in braille. Plaintiff Murphy is blind. Defendants seized his Home. The notice used to do so was not in braille. This violated the ADA. For this and the additional reasons found above and in the Opening Brief, the 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 6,500 words, to wit, no more than 6,432 words.

Pursuant to Local Rule 31.1(c), I certify that the text of the electronic brief is identical to the text of the paper copies. I also certify that a virus detection program, specifically Norton 360 has been run on this file and that no virus was detected.

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