



When Silence Becomes Liability: Enforcing Communication Access in California's Carceral and Reentry Systems

California's civil rights framework does not tolerate exclusion by design or by neglect. Yet across carceral settings and reentry programs, individuals who cannot effectively hear, process, or express information in real time encounter a persistent barrier that remains underenforced: the denial of effective communication. That failure is not merely administrative. It can constitute unlawful discrimination where a public entity or federally funded program fails to provide effective communication to a person with a disability.

This article argues that communication access should be understood and enforced as a condition of lawful participation in custodial and post custodial systems. Where liberty, compliance, medical care, discipline, or access to services turns on comprehension, the failure to provide effective communication may violate Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, and parallel California statutes. The implications are immediate. Institutions that do not meet these obligations face both individual and systemic liability.

Title II of the ADA provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity. The Supreme Court has confirmed that this mandate applies to state prisons. Implementing regulations require public entities to take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others and, where necessary, to furnish appropriate auxiliary aids and services to afford an equal opportunity to participate. Section 504 imposes parallel obligations on programs or activities receiving federal financial assistance. California law reinforces these protections through the Unruh Civil Rights Act and the California Disabled Persons Act, while California Government Code section 11135 extends similar prohibitions to covered state programs and incorporates ADA standards as to disability discrimination.

Courts have long recognized that meaningful access requires more than physical presence. In *Tennessee v. Lane*, 541 U.S. 509 2004, the Supreme Court held that access to courts includes the ability to participate meaningfully in judicial proceedings. The Ninth Circuit has likewise held that a public entity violates the ADA when it knows that a disabled person needs an accommodation and fails to act. These principles extend beyond the courtroom. They apply wherever a person must understand information to exercise rights, comply with obligations, receive services, or avoid sanctions.

Despite settled law, communication access in carceral and reentry settings remains inconsistent. Institutions often rely on informal methods that do not ensure accuracy or timeliness. They use written notes or ad hoc assistance in place of qualified interpreters when circumstances require

more reliable communication support. They delay services until after critical interactions have occurred. They proceed with disciplinary hearings, medical consultations, classification decisions, and program orientations without verifying comprehension. Those practices do not satisfy the requirement that communications be as effective as communications with others. Where a prison or jail is aware that a person has hearing loss, speech limitations, cognitive communication limitations, or another disability affecting communication, the entity must take reasonable steps to ensure effective communication in the specific context at issue. The Supreme Court's decision in *Pennsylvania Department of Corrections v. Yeskey*, 524 U.S. 206 1998 confirms that Title II reaches prison programs and services, and the Ninth Circuit in *Armstrong v. Brown*, 732 F.3d 955 9th Cir. 2013 recognized that California officials remain responsible under federal disability law for accommodations affecting disabled parolees housed in county jails, including failures to communicate disability related information and to assist counties in addressing accommodation needs.

The consequences of ineffective communication are not speculative. They are immediate and often severe. Individuals may sign waivers or consent forms without understanding their content. They may fail to comply with program requirements because instructions were inaccessible. They may incur disciplinary sanctions based on misunderstood directives. They may miss critical medical information or treatment options because providers could not effectively communicate. They may be denied access to parole or reentry processes because necessary communication supports were not provided. These outcomes reflect a breakdown in the legal obligation to ensure meaningful access.

A plaintiff seeking damages under Title II or Section 504 must establish intentional discrimination, which in the Ninth Circuit may be shown through deliberate indifference. Under *Duvall v. County of Kitsap*, 260 F.3d 1124 9th Cir. 2001, deliberate indifference requires knowledge that harm to a federally protected right is substantially likely and a failure to act upon that likelihood. In practice, this means a plaintiff must show that the public entity knew of the need for an accommodation and did not respond reasonably. In carceral and reentry contexts, that notice is often apparent. Institutions know that individuals with communication disabilities will interact with disciplinary, medical, parole, and program systems. They cannot plausibly claim surprise when accommodations are required. In these settings, the failure to ensure effective communication is not merely noncompliance. It is a foreseeable and actionable civil rights violation. The Supreme Court's discussion of deliberate indifference in *Gebser v. Lago Vista Independent School District*, 524 U.S. 274 1998, while arising in the Title IX context, provides background for understanding intentional discrimination, but the controlling Ninth Circuit authority in ADA cases remains *Duvall*.

The enforcement gap persists in part because communication access is often treated as an accommodation rather than as a prerequisite to lawful participation. That framing understates the legal reality. Effective communication is not optional where it is necessary to make a program, service, hearing, or medical interaction accessible. If a person cannot understand or be understood, participation is not meaningful. California's own correctional regulations reflect this principle. The California Department of Corrections and Rehabilitation has adopted regulations defining and operationalizing effective communication, including documentation requirements for accommodation needs and assistance provided, and the Board of Parole Hearings likewise

states that it makes reasonable efforts to enable persons with disabilities to participate in proceedings and documents accommodation planning. Recent litigation emerging from reentry and custodial contexts reflects a growing shift toward enforcement of communication access obligations, signaling that failures long treated as administrative are now being framed as actionable civil rights violations exposing institutions to injunctive relief and damages.

The Communication Access Equity Project, developed in collaboration with Tremmel Watson, responds to this enforcement gap by integrating litigation, policy advocacy, and data driven investigation. The project treats communication access as a civil rights issue requiring coordinated enforcement. It identifies patterns of noncompliance, brings targeted cases to establish liability, and translates findings into policy reforms that institutionalize compliance.

In litigation, practitioners should focus on four core areas. They should plead denial of effective communication directly by framing the claim as a violation of Title II and Section 504 supported by specific instances where auxiliary aids or communication accommodations were necessary but not provided. They should establish notice through intake records, grievances, medical or classification notes, prior accommodation requests, or the obvious nature of the disability. They should develop evidence of systemic failure by seeking policies, training materials, contracts, grievance logs, and records showing how the institution identifies and responds to communication needs. They should seek injunctive relief requiring policies, training, interpreter access, captioning or other auxiliary aids, tracking systems, and monitoring to ensure compliance.

Discovery should focus on policies governing auxiliary aids and services, staff training materials, contracts with interpretation or captioning vendors, grievance logs, intake and classification records, and documentation reflecting how accommodations were provided. Depositions of persons most knowledgeable can reveal whether staff are trained to identify communication needs and how decisions are made, often demonstrating that failures are systemic rather than isolated. Remedies should address structural deficiencies by requiring institutions to implement policies ensuring timely access to qualified interpreters and other appropriate auxiliary aids, train staff, document accommodation requests and responses, monitor compliance, and report recurring failures. These remedies align with the ADA's and Section 504's goal of eliminating discrimination through effective access.

Policy advocacy complements litigation by translating legal obligations into operational standards. Legislative and administrative bodies can establish clear requirements for communication access in carceral and reentry settings, including minimum standards for auxiliary aids and timelines for their provision, mandate data collection and reporting to facilitate oversight, and tie funding to compliance with accessibility requirements.

The implications of enforcing communication access extend beyond disability rights and implicate access to justice itself. Communication is the medium through which rights are exercised and obligations are imposed, and when individuals cannot access that medium, the integrity of the system is compromised. California's legal framework provides the tools necessary to address these failures, but the challenge lies in enforcement. The path forward is direct. Institutions must recognize that communication access is a legal requirement, not a

discretionary practice, and must implement policies and training that ensure compliance while allocating resources to provide auxiliary aids where necessary. Failure to do so may result in liability.

For practitioners, communication access claims present a pathway to address systemic deficiencies that have long gone unchallenged. For policymakers, the imperative is to codify and enforce standards that reflect the law's requirements. For institutions, the message is unequivocal: compliance is not optional.

The denial of effective communication is not a peripheral issue. It is a central challenge that shapes whether individuals can navigate systems that govern their lives. Addressing it requires coordinated litigation, policy reform, and community engagement. The Communication Access Equity Project represents one such effort, grounded in enforcement and informed by lived experience. Silence, when imposed by institutional failure, is not neutral. It excludes. The law already provides the framework. What has been missing is consistent enforcement. That gap is narrowing, and institutions that continue to treat communication access as discretionary will increasingly face legal exposure as this area of law develops through litigation, policy intervention, and coordinated advocacy.