

1 THOMAS E. PEREZ  
Assistant Attorney General  
2 SAMUEL R. BAGENSTOS  
Principal Deputy Assistant Attorney General  
3 Civil Rights Division

4 ANDRÉ BIROTTE, JR.  
United States Attorney  
5 LEON W. WEIDMAN  
Chief, Civil Division  
6 Central District of California  
7 300 N. Los Angeles Street  
Room 7516  
8 Los Angeles, CA 90012

9 JOHN L. WODATCH, Chief  
10 PHILIP L. BREEN, Special Legal Counsel  
JEANINE M. WORDEN, Deputy Chief  
11 DOV LUTZKER, Special Counsel  
WILLIAM F. LYNCH, Trial Attorney  
12 Disability Rights Section  
Civil Rights Division  
13 U.S. Department of Justice  
14 950 Pennsylvania Avenue, N.W. (NYA)  
Washington, D.C. 20530  
15 Telephone: (202) 305-2008 (Lynch)  
Facsimile: (202) 514-7821  
16 [William.Lynch@usdoj.gov](mailto:William.Lynch@usdoj.gov)

17 IN THE UNITED STATES DISTRICT COURT  
18 CENTRAL DISTRICT OF CALIFORNIA

19  
20 COMMUNITIES ACTIVELY LIVING  
INDEPENDENTLY AND FREE, et al.,

21 Plaintiffs,

22 v.

23 CITY OF LOS ANGELES and COUNTY OF  
24 LOS ANGELES,

25 Defendants.  
26  
27  
28

Case No. CV 09-0287 CBM (RZx)

**STATEMENT OF INTEREST OF THE  
UNITED STATES**

Date: October 12, 2010  
Time: 12:00 Noon  
Place: Courtroom 2  
Judge: Hon. Consuelo B. Marshall

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

I. **INTRODUCTION**.....1

II. **LEGAL AUTHORITY FOR FILING STATEMENT OF INTEREST** .....2

III. **BACKGROUND** .....3

    A. *People with Disabilities Have Consistently Faced Discrimination in Emergencies and Disasters Because Emergency Managers Have Not Planned and Prepared to Meet Their Needs* .....3

    B. *The ADA and Section 504 Prohibit Discrimination in Emergency Management Programs*.....5

    C. *The Department of Justice Has Issued Guidance to Help Eliminate Discrimination Against Individuals with Disabilities in Emergencies and Disasters* .....7

IV. **THE CITY OF LOS ANGELES HAS FAILED TO PLAN AND PREPARE TO ENSURE THE RIGHTS OF INDIVIDUALS WITH DISABILITIES DURING EMERGENCIES** .....8

    A. *The City Plans and Prepares for Emergencies in General, but Fails to Do So for Persons with Disabilities* .....8

    B. *The City Receives Large Amounts of Federal Funding that Could Have Been Used to Plan and Prepare for the Disaster-Related Needs of People with Disabilities* .....10

V. **THE ADA AND SECTION 504 REQUIRE MORE THAN LOS ANGELES’ GENERAL ASSERTIONS OF THE ABILITY TO PROVIDE AD HOC REASONABLE ACCOMMODATIONS UPON REQUEST** .....11

    A. *The Equal Opportunity Guarantees of the ADA and Section 504 in Emergency Management Cannot Be Met Without an Integrated Plan*.....13

    B. *The City’s Defenses Are Not Supported by the Facts or the Law* .....15

        1. Ad Hoc “Reasonable Accommodations” During a Disaster Are, by Themselves, Inadequate .....15

        2. The Outlay of Funds Is Not Tantamount to a Fundamental

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Alteration or Undue Financial and Administrative Burdens .....16

3. Integrated Emergency Management Can Have Fiscal Benefits .....17

4. The Personal Devices and Services Exemption Does Not Apply in the  
Emergency Management Context.....19

5. Integrated Emergency Planning Cannot Be Delayed.....20

6. Equal Opportunity Under Title II Requires Compliance with the  
Regulation .....22

VI. CONCLUSION .....25

**FEDERAL CASES**

Alexander v. Choate,  
469 U.S. 287 (1985) .....22

Arc of Wash. State Inc. v. Braddock,  
427 F.3d 615 (9th Cir. 2005) .....14

Armstrong v. Schwarzenegger,  
No. 09-17144, 13479-13483 (9th Cir. Sept. 7, 2010).....7

Auer v. Robbins,  
519 U.S. 452, 117 S. Ct. 905, 137 L. Ed. 2d 79 (1977).....7, 20

Baird ex rel. Baird v. Rose,  
192 F.3d 462 (4th Cir. 1999) .....6

Bird v. Lewis & Clark College,  
303 F.3d 1015 (9th Cir. 2002) .....21

Bragdon v. Abbott,  
524 U.S. 624, 118 S. Ct. 2196, 141 L. Ed. 2d 540 (1998).....7

Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.,  
467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984).....6

City of Los Angeles v. Lyons,  
461 U.S. 95, 111, 103 S. Ct. 1660, 75 L. Ed. 2d 675 (1983).....22

Fisher v. Oklahoma Health Care Auth.,  
335 F.3d 1175 (10<sup>th</sup> Cir. 2003) .....17

Goodman v. Georgia,  
546 U.S. 151, 126 S. Ct. 877, 163 L. Ed. 2d 650 (2006).....14

Lujan v. Defenders of Wildlife,  
504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)..... 21-22

Olmstead v. L.C.,  
527 U.S. 581, 119 S. Ct. 2176, 144 L. Ed. 2d 540 (1999)..... *passim*

Pa. Dept. of Corrs. v. Yeskey,  
524 U.S. 206, 118 S. Ct. 1952, 141 L. Ed. 2d 215 (1998) .....12, 14

Sanchez v. Johnson,  
416 F.3d 1051 (9th Cir. 2005) .....6

Stinson v. United States,  
508 U.S. 36, 113 S. Ct. 1913, 123 L. Ed. 2d 598 (1993).....20

Townsend v. Quasim,  
328 F.3d 511 (9th Cir. 2003) ..... 16-17, 21

**Statement of Interest of the United States of America**

1 Yeskey v. Pa. Dept. of Corrs.,  
118 F.3d 168 (3d Cir. 1997).....6

2 Zukle v. Regents of Univ. of California, 166 F.3d 1041 (9th Cir. 1999) .....6

3 **FEDERAL STATUTES**

4 28 U.S.C. § 517.....3

5 29 U.S.C. § 780 et seq......3

6 29 U.S.C. § 794..... *passim*

7 31 U.S.C. § 6101 note..... 10-11

8 42 U.S.C. § 12101.....5, 12

9 42 U.S.C. §§ 12131-12134 .....1

10 42 U.S.C. § 12132..... *passim*

11 42 U.S.C. § 12133.....6

12 42 U.S.C. § 12134.....3, 6

13 42 U.S.C. §§ 12181-12189 .....23

14 42 U.S.C. § 12201.....6

15 42 U.S.C. § 12206.....3, 6

16 **FEDERAL REGULATIONS**

17 28 C.F.R. pt. 35..... *passim*

18 28 C.F.R. pt. 35, App. A..... *passim*

19 28 C.F.R. § 35.105 .....21

20 28 C.F.R. § 35.130..... *passim*

21 28 C.F.R. § 35.135 .....19

22 28 C.F.R. §§ 35.149-151..... *passim*

23 28 C.F.R. § 35.150.....16, 17

24 28 C.F.R. § 35.160.....13

25 28 C.F.R. §§ 35.160-164.....14

26 28 C.F.R. § 35.164.....16, 17

27  
28 **Statement of Interest of the United States of America**

1 28 C.F.R. § 35.190 .....3  
 2 28 C.F.R. pt. 36, App. A ..... *passim*  
 3 28 C.F.R. pt. 41 ..... *passim*  
 4 28 C.F.R. § 41.51 .....13  
 5 28 C.F.R. pt. 42 subpt. G .....3

6 **FEDERAL TECHNICAL ASSISTANCE, GUIDANCE, AND REPORTS**

7 Federal Emergency Mgmt. Agency, Guidance on Planning for  
 8 Integration of Functional Needs Support Services in  
 9 General Population Shelters.....14  
 10 Federal Emergency Mgmt. Agency, Prepared Testimony Before the House  
 11 Comm. on Homeland Security, Subcomm. on Emergency Communications,  
 12 Preparedness, and Response .....15  
 13 Federal Emergency Mgmt. Agency, Section 689 Guidelines..... 17-18  
 14 National Council on Disability, Effective Emergency Management: Making  
 15 Improvements for Communities and People with Disabilities .....5  
 16 National Council on Disability, Emergency Management and People with  
 17 Disabilities: Before, During and After, Cong'l Briefing ..... 4-5  
 18 National Council on Disability, Hurricane Affected Areas I and II .....4  
 19 National Council on Disability, The Needs of People with Psychiatric  
 20 Disabilities During Hurricanes Katrina and Rita .....18  
 21 National Council on Disability, Saving Lives: Including People with  
 22 Disabilities in Emergency Planning.....4  
 23 U.S. Dept. of Justice, Chapter 7 of the ADA Best Practices Tool Kit  
 24 For State and Local Governments..... *passim*  
 25 U.S. Dept. of Justice, Title II Technical Assistance Manual .....19

26 **STATE STATUTES**

27 2 Cal. Gov't Code §§ 8550-8899.24 .....8, 12

28 **CITY OF LOS ANGELES ADMINISTRATIVE CODE**

Los Angeles Admin. Code §§ 8.21-8.87.....8, 12

**CITY OF LOS ANGELES EMERGENCY PLANS AND PROCEDURES**

City of Los Angeles Citywide Logistics Annex .....9  
 City of Los Angeles Emergency Operations Organization  
**Statement of Interest of the United States of America**

Master Plan and Procedures..... *passim*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Statement of Interest of the United States of America**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## I. INTRODUCTION

This class action lawsuit alleges that the County and City of Los Angeles, California discriminate against individuals with disabilities in their emergency management programs in violation of federal law, including Title II of the Americans with Disabilities Act of 1990 (“Title II” or “ADA”), 42 U.S.C. §§ 12131-12134, and Section 504 of the Rehabilitation Act of 1973 (“Section 504” or “Rehabilitation Act”), 29 U.S.C. § 794. Plaintiffs contend that Los Angeles has failed to conduct the planning required to meet the needs of individuals with disabilities and ensure access for these individuals across the full spectrum of its emergency programs, services, and activities. The City responds that it will meet the needs of individuals with disabilities during or after an emergency by providing *ad hoc* reasonable accommodations when individuals with disabilities request them.

The United States agrees with, and supports, the Plaintiffs’ Motion for Summary Judgment. Simply put, Los Angeles cannot afford individuals with disabilities an equal opportunity to survive and recover from emergencies unless it plans and prepares in advance to meet the disability-related needs of its residents and visitors. The evidence shows beyond dispute that Los Angeles has not performed the advance planning and preparations necessary to provide individuals with disabilities an equal opportunity to access and benefit from its emergency management programs, services, and activities despite the receipt of large amounts of federal funding that could have been used for this purpose. For example, the City has **not**:

- Established a system to notify individuals who are deaf or hard of hearing about the need to evacuate or shelter in place;
- Conducted outreach to determine who will need assistance evacuating their homes or established mechanisms that individuals with disabilities can use to obtain assistance;
- Made arrangements for accessible vehicles to be available to transport to emergency shelters individuals who use wheelchairs and need evacuation assistance;

**Statement of Interest of the United States of America**



- Surveyed its emergency shelters to identify inaccessible features such as inaccessible entrances with steps and inaccessible toilet rooms and taken corrective actions to eliminate such barriers or find substitute shelters that are accessible;
- Made plans to provide life-sustaining medications, consumable medical supplies, durable medical equipment, or assistance in eating, dressing, or toileting for individuals with disabilities who will require these things to survive in an emergency shelter; or
- Made plans, when a shelter-in-place response is executed, such as during a power-outage, to provide in-home assistance or sheltering options for individuals with disabilities whose survival depends on electrically powered equipment.

For this reason, the United States joins the Plaintiffs in asking the Court to grant Plaintiffs’ Motion for Summary Judgment and order the City of Los Angeles to amend and supplement its planning preparations, and take all other steps necessary, to ensure that individuals with disabilities are afforded an equal opportunity to survive and recover from emergencies.

## II. LEGAL AUTHORITY FOR FILING STATEMENT OF INTEREST

The U.S. Department of Justice enforces, regulates, implements, coordinates, and provides technical assistance for the ADA and Section 504, which includes the application of these laws to emergency management programs, services, and activities. See, e.g., U.S. Dept. of Justice, ADA Best Practices Tool Kit for State and Local Gov’ts, Chapter 7, Emerg. Mgmt. under Title II of the ADA (2007), at [www.ada.gov/pcatoolkit/toolkitmain.htm#pcatoolkitch7](http://www.ada.gov/pcatoolkit/toolkitmain.htm#pcatoolkitch7) (technical assistance issued by Department of Justice on how to comply with the ADA and Section 504 in emergency management programs, services, and activities) (“Chapter 7, ADA Tool Kit”).<sup>1</sup> The United States submits the instant

---

<sup>1</sup> See 42 U.S.C. §§ 12134(a), (c) (requiring Department of Justice to issue regulations, including architectural standards, applicable to state and local governments); 42 U.S.C. § 12206 (authorizing the Department to issue technical assistance under Title II); 28 C.F.R. § 35.190 (authorizing the Department to issue policy guidance to ensure consistent interpretation of Title II and designating it as the agency **Statement of Interest of the United States of America**

1 Statement of Interest pursuant to 28 U.S.C. § 517 because this litigation implicates the proper  
2 interpretation and application of the ADA, Section 504, and the related regulations and technical  
3 assistance materials that it has issued.

### 4 **III. BACKGROUND**

#### 5 ***A. People with Disabilities Have Consistently Faced Discrimination in Emergencies and*** 6 ***Disasters Because Emergency Managers Have Not Planned and Prepared to Meet Their*** 7 ***Needs.***

8 Advance planning and preparations are critical to ensuring that the rights and needs of individuals  
9 with disabilities are met during emergencies and disasters. The National Council on Disability (“NCD”),  
10 an independent federal agency authorized by Title IV of the Rehabilitation Act of 1973, 29 U.S.C. § 780  
11 et seq., to conduct research, prepare reports, and develop recommendations on disability rights issues, has  
12 time and again identified pervasive discrimination against individuals with disabilities in emergency  
13 preparedness, response, recovery, and mitigation, always emphasizing in its recommendations the  
14 importance of inclusive *planning*.

15 In April 2005 – only a few months before Hurricanes Katrina, Rita, and Wilma – NCD identified  
16 pervasive failures to include individuals with disabilities in emergency preparedness and planning,  
17 failures to incorporate disability-related lessons learned from prior disasters into emergency planning, and  
18 the resulting unequal delivery of goods and services to people with disabilities during emergencies. See

19  
20  
21 responsible for Title II enforcement for state and local government programs and facilities); Exec. Order  
22 12,250 (assigning leadership role to Department in the coordination and enforcement of federal civil  
23 rights laws applicable to federally assisted programs, including Section 504, and directing agencies to  
24 issue regulations and policy guidance implementing the same (pt. 1-402)); 28 C.F.R. pt. 41 (implementing  
25 Exec. Order 12,250, authorizing Department of Justice’s role in coordination of federal disability rights  
26 laws involving federal assistance, and requiring federal agency regulations under Section 504 to be  
27 consistent with this part); 28 C.F.R. pt. 42 subpt. G (Nov. 2, 1980) (establishing Section 504 requirements  
28 for recipients of Department of Justice financial assistance); Accommodating Individuals with Disabilities  
in the Provision of Disaster Mass Care, Housing, and Human Services, Reference Guide, Part III: FEMA  
Policy, at [www.fema.gov/oer/reference/fema\\_policy.shtm](http://www.fema.gov/oer/reference/fema_policy.shtm) (confirming obligations of, among others,  
recipients of federal financial assistance pursuant to Section 504).

1 NCD, Saving Lives: Incl. People w. Disabilities in Emerg. Planning (2005) at  
2 [http://www.ncd.gov/newsroom/publications/2005/emergency\\_planning.htm](http://www.ncd.gov/newsroom/publications/2005/emergency_planning.htm). In the aftermath of  
3 Hurricane Katrina, because of a lack of planning, NCD reported many accounts of people with disabilities  
4 who were forced to abandon wheelchairs, walkers, medical equipment, service animals, white canes,  
5 attendants for personal assistance services, and medications. NCD on Hurricane Affected Areas I and II  
6 (2005) at <http://www.ncd.gov/newsroom/publications/2005/katrina.htm> and  
7 <http://www.ncd.gov/newsroom/publications/2005/katrina2.htm>. Because of a lack of planning and  
8 preparations, NCD reported, emergency information was not disseminated via broadcasts in accessible  
9 formats, inaccessible facilities were used, and persons with disabilities and organizations representing  
10 their rights were not included in preparedness activities that could have mitigated many of the adverse  
11 results. *Id.* NCD again emphasized the importance of preparation, that:

13 Relief and rescue operations must have the appropriate medical equipment, supplies, and  
14 training to address the immediate needs of people with disabilities. Affected individuals  
15 will require bladder bags, insulin pumps, walkers, or wheelchairs. Relief personnel must  
16 be equipped and trained in the use of such equipment. In addition, relief personnel should  
17 provide training, particularly for personnel and volunteers in the field, on how to support  
the independence and dignity of persons with disabilities in the aftermath of Hurricane  
Katrina.

18 *Id.*; see also NCD, Emerg. Mgmt. and People w. Disabilities, Cong'l Briefing (Nov. 10, 2005) (same) at  
19 [http://www.ncd.gov/newsroom/publications/2005/transcript\\_emergencymgt.htm](http://www.ncd.gov/newsroom/publications/2005/transcript_emergencymgt.htm).

20 In 2009, NCD once again stressed that “[p]lanning is possibly the most important, albeit the most  
21 difficult, stage in the emergency management process. This is due, in part, to the unpredictable nature of  
22 disasters .... The generic, one-size-fits-all approach to disaster planning does not work.” NCD, Effective  
23 Emerg. Mgmt. (2009) at  
24 [http://www.ncd.gov/newsroom/publications/2009/NCD\\_EmergencyManagement\\_HTML/EffectiveEmergencyManagement.html](http://www.ncd.gov/newsroom/publications/2009/NCD_EmergencyManagement_HTML/EffectiveEmergencyManagement.html). NCD emphasized:

27 The challenges faced by persons with disabilities (physical, sensory, cognitive, psychiatric,  
28 etc.) . . . in all disaster-threat situations have been made even more clear through events

**Statement of Interest of the United States of America**

1 such as September 11, Hurricane Katrina, and the latest wildfires in Southern California.  
2 Problems with warning transmission and receipt, transportation, evacuation, shelter, and  
3 long-term recovery have been documented through both research studies and government  
4 investigations . . . . Lack of planning and lack of inclusion of persons with disabilities . . .  
5 remains a problem across the nation, despite . . . the Nationwide Plan Review, post-  
6 Katrina legislation, and U.S. Department of Justice Shelter Guidance, to list but a few.

7 Id.

8 ***B. The ADA and Section 504 Prohibit Discrimination in Emergency Management***  
9 ***Programs.***

10 The ADA, 42 U.S.C. §§ 12101 et seq., is a comprehensive civil rights law enacted “to provide a  
11 clear and comprehensive national mandate for the elimination of discrimination against individuals with  
12 disabilities.” 42 U.S.C. § 12101(b)(1). Its coverage is broad, prohibiting disability-based discrimination  
13 in employment, state and local government programs and services, transportation systems,  
14 telecommunications, commercial facilities, and the provision of goods and services to the public by for-  
15 profit and nonprofit private entities. Title II of the ADA was enacted to broaden the coverage of Section  
16 504, which prohibits discrimination under, exclusion from participation in, and the denial of benefits of  
17 “any program or activity receiving federal financial assistance,” including emergency management  
18 programs and activities of state and local governments. 29 U.S.C. § 794(a). Title II extends these  
19 protections to *all* state and local government programs, services, and activities, including emergency  
20 management and other programs receiving no federal funds. Title II provides that:

21 [N]o qualified individual with a disability shall, by reason of such disability, be excluded  
22 from participation in or be denied the benefits of the services, programs, or activities of a  
23 public entity, or be subjected to discrimination by any such entity.

24 42 U.S.C. § 12132. The ADA and Section 504 are generally construed to impose the same or similar  
25 requirements. Sanchez v. Johnson, 416 F.3d 1051, 1062 (9th Cir. 2005); Zukle v. Regents of Univ. of  
26 California, 166 F.3d 1041, 1045 n.11 (9th Cir. 1999).<sup>2</sup>

---

27 <sup>2</sup> This principle applies not only because of the similar language and remedies shared by the two acts but  
28 also because of the Congressional directive that implementation and interpretation of the two acts “be  
**Statement of Interest of the United States of America**

1 Congress explicitly delegated to the Department of Justice the authority to promulgate regulations  
2 under both statutes. See 42 U.S.C. § 12134(a); 28 C.F.R. pt. 35 (Title II); 29 U.S.C. § 794(a); 28 C.F.R.  
3 pt. 41 (Section 504 coordination regulation for federally assisted programs that sets the baseline for 504  
4 rules issued by federal agencies). Congress also authorized the Department to issue technical assistance  
5 on compliance with the ADA. 42 U.S.C. § 12206. Accordingly, the Department’s regulations and  
6 interpretation thereof are entitled to substantial deference. See Chevron U.S.A. Inc. v. Natural Res. Def.  
7 Council, Inc., 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984); Olmstead v. L.C., 527 U.S. 581,  
8 597-98, 119 S. Ct. 2176, 144 L. Ed. 2d 540 (1999) (“[T]he well-reasoned views of the agencies  
9 implementing a statute constitute a body of experience and informed judgment to which courts and  
10 litigants may properly resort for guidance.”); Armstrong v. Schwarzenegger, No. 09-17144, 13479-13483  
11 (9th Cir. Sept. 7, 2010) (deference to Attorney General’s interpretation of Title II); cf. Bragdon v. Abbott,  
12 524 U.S. 624, 646, 118 S. Ct. 2196, 141 L. Ed. 2d 540 (1998) (citing same for Title III of the ADA); see  
13 also Auer v. Robbins, 519 U.S. 452, 461, 117 S. Ct. 905, 137 L. Ed. 2d 79 (1977) (agency’s interpretation  
14 of its regulations “controlling unless plainly erroneous or inconsistent with the regulation”).  
15

16  
17 ***C. The Department of Justice Has Issued Guidance to Help Eliminate Discrimination***  
18 ***Against Individuals with Disabilities in Emergencies and Disasters.***

19 To assist emergency managers in evaluating and remediating emergency plans to ensure inclusion  
20 of people with disabilities throughout the phases of disasters, the U.S. Department of Justice has  
21 developed technical assistance. See Chapter 7, ADA Tool Kit. Chapter 7 of the ADA Tool Kit guides  
22 emergency managers through obligations under the ADA and Section 504, including planning;  
23

24  
25 coordinated to prevent[ ] imposition of inconsistent or conflicting standards for the same requirements  
26 under the two statutes.” Baird ex rel. Baird v. Rose, 192 F.3d 462, 468-69 (4th Cir. 1999) (citing 42  
27 U.S.C. § 12117(b)) (omission in original). Title II provides that “[t]he remedies, procedures, and rights”  
28 set forth under Section 504 shall be available to any person alleging discrimination in violation of Title II.  
42 U.S.C. § 12133; see also 42 U.S.C. § 12201(a) (ADA must not be construed more narrowly than  
Rehabilitation Act). See also Yeskey v. Com. of Penn. Dep’t of Corrections, 118 F.3d 168, 170 (3d Cir.  
1997) (“[A]ll the leading cases take up the statutes together, as we will.”), aff’d, 524 U.S. 206 (1998).

**Statement of Interest of the United States of America**

1 preparation; testing of preparedness; notification; community evacuation and transportation; emergency  
2 shelter programs; temporary lodging and housing; social services and emergency- and disaster-related  
3 benefit programs; emergency medical care and services; relocation programs, activities, and services;  
4 transition and transportation back to the community following an emergency or disaster; recovery  
5 programs; and remediation of damage caused by emergencies and disasters. Evaluation of an emergency  
6 management plan for inclusion of people with disabilities throughout is a critical first step in delivering a  
7 successful, inclusive, and nondiscriminatory emergency response. As discussed more fully in the  
8 following sections, it is also required by law.

9  
10 The ADA and Section 504 require equal opportunity, and prohibit discrimination against  
11 individuals with disabilities. When, as in this case, emergency management involves advance planning  
12 and preparation to meet the needs of the general public but similar advance planning and preparation are  
13 not undertaken to meet the readily identifiable needs of individuals with disabilities, people with  
14 disabilities are subjected to disparate treatment and denied equal opportunities to participate in – and  
15 benefit from – emergency management programs. Disparate treatment, and denial of equal opportunities,  
16 are the very types of discrimination that the ADA and Section 504 were enacted to prevent. See, e.g., 28  
17 C.F.R. § 35.130 (prohibiting various forms of discrimination in programs, services, and activities,  
18 including unequal treatment in emergency management planning for individuals with disabilities); 28  
19 C.F.R. § 35.130(b)(4)(i) (prohibiting public entities from determining the site or location of a facility that  
20 has the effect of excluding individuals with disabilities or otherwise subjecting them to discrimination).

21  
22 **IV. THE CITY OF LOS ANGELES HAS FAILED TO PLAN AND PREPARE TO ENSURE**  
23 **THE RIGHTS OF INDIVIDUALS WITH DISABILITIES DURING EMERGENCIES**

24 ***A. The City Plans and Prepares for Emergencies in General, but Fails to Do So for Persons***  
25 ***with Disabilities.***

26 The California Emergency Services Act, 2 Cal. Gov't Code §§ 8550-8899.24, and the Los  
27 Angeles Admin. Code §§ 8.21-8.87 establish the City's emergency management program. The City's

28 **Statement of Interest of the United States of America**

1 Emergency Management Department (“LAEMD”) coordinates the preparedness, planning, training, and  
2 recovery activities of the City’s Emergency Operations Organization (“EOO”). See City of Los Angeles,  
3 Emerg. Mgmt. Dept., at <http://emergency.lacity.org/epdepd2b.htm#Communications>; City of Los  
4 Angeles, EOO Master Plan, at <http://emergency.lacity.org/epdp2a3a.htm>. The EOO Master Plan sets out  
5 the authority, responsibility, and functions of various City agencies, “[p]rovides a basis for the conduct  
6 and coordination of operations and the management of critical resources during emergencies,” and  
7 incorporates responsibilities of non-governmental entities. See City of Los Angeles, EOO Master Plan,  
8 Intro. at 1.2, at <http://emergency.lacity.org/epdp2a3a.htm>.

9  
10 The EOO Master Plan reflects extensive planning and preparation to meet the needs of the general  
11 population, including sheltering, temporary lodging, food, portable toilets, shelter for pets, transportation,  
12 equipment, and personnel. By contrast, it reflects no planning for accessible sheltering, toilets,  
13 transportation, service animal support, or equipment and personnel to provide disability-related assistance  
14 and support. Id. In fact, it is almost silent on meeting the rights and needs of people with disabilities  
15 during disasters, as are its Division Plans and Annexes, stating only:

16  
17 DISABILITIES CONSIDERATIONS

18 During a disaster relief operation, the Logistics Section of the EOC is responsible for the  
19 acquisition and deployment of resources for the operations, both human and otherwise.

20 The Department on Disability, in pre-incident planning, will attempt to:

- 21
- Provide information on resources for people with disabilities so that the Logistics Section can effectively and efficiently acquire and deploy those resources.
  - Provide information so that emergency workers and first responders in a disaster can correctly identify and request resources for people with disabilities.

22 City of Los Angeles, Citywide Logistics Annex at 50 (Sept. 15, 2008) at  
23 [emergency.lacity.org/pdf/epa/Citywide\\_Logistics\\_Annex.pdf](http://emergency.lacity.org/pdf/epa/Citywide_Logistics_Annex.pdf). At best, this is an unimplemented plan to  
24 plan.

25 The City’s Department on Disability (“DOD”) is otherwise excluded from the EOO and Master  
26 Plan and literally does not have a seat in the Emergency Operations Center to coordinate disaster response  
27 for people with disabilities. The City’s DOD has itself admitted a serious lack of planning and  
28 **Statement of Interest of the United States of America**

1 preparedness to meet the disaster-related needs of people with disabilities:

2 It is our belief that the City Emergency Management and Disaster Preparedness Program is  
3 seriously out of compliance with the Americans with Disabilities Act of 1990 (Title II),  
4 [t]he Rehabilitation Act of 1973, as amended, Section 504 ...

5 Although the Department on Disability (DOD) is responsible for ensuring that City  
6 Department programs, services and activities are accessible to persons with disabilities,  
7 there appears to be continued resistance and a lack of responsiveness relative to suggested  
8 emergency management preparedness plan updates and changes. DOD's  
9 recommendations for ensuring accessibility are often overlooked and not included in  
10 reports unless DOD staff are actually present at meetings and bring attention to the issues.  
11 ...

12 The DOD strongly believes that Angelinos with disabilities will continue to be at-risk for  
13 suffering and death in disproportionate numbers, unless the City family drastically  
14 enhances the existing disability-related emergency management and disaster planning  
15 process and readiness as required by the ADA and other statutes. ...

16 Mem. from Regina Houston-Swain, Exec. Director, DOD to James Featherstone, General Manager,

17 Emergency Mgmt. Dept. (Aug. 27, 2008), Pl's M. Summ. J., Smith Decl., Ex L (Bates No. 4401).

18 Indeed, having apparently reviewed the technical assistance issued by the Department of Justice, the DOD  
19 itself recommended that the City assess all emergency facilities for architectural compliance with the  
20 ADA and Section 504 by using Chapter 7 of the ADA Tool Kit, establish a memorandum of  
21 understanding with the Los Angeles Chapter of the Red Cross to ensure personal assistance services  
22 during disasters, evaluate all emergency plans, and "integrate people with disabilities, disability service  
23 providers, and advocacy organizations into the planning process," and "all emergency and disaster  
24 exercises." Id.

25 ***B. The City Receives Large Amounts of Federal Funding that Could Have Been Used to Plan  
26 and Prepare for the Disaster-Related Needs of People with Disabilities***

27 Since fiscal year 2000, the federal government, through its various agencies, has allocated large  
28 amounts of federal financial assistance to the City. See [www.transparency.gov](http://www.transparency.gov), which is hosted by the



1 U.S. Office of Management and Budget.<sup>3</sup> A search of this database reveals that the City has been  
2 allocated \$48.9 million in assistance directly from the Federal Emergency Management Agency  
3 (“FEMA”) and a total of \$2.78 billion in assistance from the federal government as a whole. These totals  
4 do not include funds that are first allocated to the State of California before distribution to the City (much  
5 of FEMA’s funding for emergency management first goes through states), nor do they account for  
6 potential assistance distributed in response to particular emergencies or disasters. As discussed above, the  
7 receipt of federal financial assistance requires compliance with the nondiscrimination requirements of  
8 Section 504. Notwithstanding this extent of federal funding, emergency planning and preparation for  
9 persons with disabilities is absent and, as admitted by LAEMD’s Director, unequal to the planning for the  
10 general population:  
11

12 **Q.:** Do you think you are as well prepared to deal with the needs of people with disabilities  
13 in an emergency as you are with the general population.

14 **A.:** No.

15 Dep. of James Featherstone, Director, LAEMD at 95:9-12 (Feb. 3, 2010), Smith Decl., Ex A.

16 **V. THE ADA AND SECTION 504 REQUIRE MORE THAN**  
17 **THE CITY’S GENERAL ASSERTIONS OF THE ABILITY TO PROVIDE**  
18 **AD HOC REASONABLE ACCOMMODATIONS UPON REQUEST**

19 In response to Plaintiffs’ allegations that Los Angeles has not planned or prepared to meet the  
20 needs of individuals with disabilities, the City asserts that it can nonetheless comply with the ADA and  
21 Section 504 by granting *ad hoc* reasonable accommodations for individuals with disabilities, upon  
22 request, when emergencies and disasters occur. While the ADA and Section 504 certainly require the  
23 City to grant reasonable modifications of policies, practices, and procedures that are necessary to avoid  
24 discrimination against individuals with disabilities in emergencies and disasters, 28 C.F.R. § 35.130(b)(7);  
25 28 C.F.R. pt. 41, both statutes require far more.

26 \_\_\_\_\_  
27 <sup>3</sup> This federal financial assistance database and website are developed pursuant to the Federal Funding  
28 Accountability and Transparency Act of 2006, P.L. 109-282 (2006), 31 U.S.C. § 6101 note, and was  
launched in December 2007.

1 In enacting the ADA, Congress found that “historically, society has tended to isolate and segregate  
2 individuals with disabilities, and, despite some improvements, such forms of discrimination against  
3 individuals with disabilities continue to be a serious and pervasive social problem.” 42 U.S.C. §  
4 12101(a)(2). Congress also found that:

5 [I]ndividuals with disabilities continually encounter various forms of discrimination,  
6 including outright intentional exclusion, the discriminatory effects of architectural,  
7 transportation, and communication barriers, overprotective rules and policies, failure to  
8 make modifications to existing facilities and practices, exclusionary qualification standards  
and criteria, segregation, and relegation to lesser services, programs, activities, benefits,  
jobs, or other opportunities.

9 42 U.S.C. § 12101(a)(6). Emergency management is one of these areas where discrimination against  
10 individuals with disabilities continues to be a serious and pervasive problem, as detailed in the numerous  
11 reports by NCD. See discussion supra pp. 3-5. It is with this history of discrimination against individuals  
12 with disabilities in emergency management that the Department of Justice issued Chapter 7 of the ADA  
13 Tool Kit, providing emergency managers with authoritative technical guidance they could use to avoid  
14 future disability discrimination.  
15

16 A primary responsibility of state and local governments is to protect residents and visitors from  
17 harm, including assistance in preparing for, responding to, and recovering from emergencies and  
18 disasters. See The California Emergency Services Act, 2 Cal. Gov’t Code §§ 8550-8899.24; Los Angeles  
19 Admin. Code §§ 8.21-8.87 (both authorizing the City’s emergency management program). When a  
20 public entity conducts programs, services, and activities relating to emergency management, it must  
21 ensure nondiscrimination consistent with the ADA and, where federal funds are involved, Section 504. 42  
22 U.S.C. § 12132; 29 U.S.C. § 794; see also Pa. Dept. of Corrs. v. Yeskey, 524 U.S. 206, 210, 118 S. Ct.  
23 1952, 141 L. Ed. 2d 215 (1998) (Scalia, J.) (finding unanimously that state prisons and their activities fit  
24 squarely and unmistakably as programs, services, and activities under Title II). The civil rights of  
25 individuals with disabilities must be met throughout all facets of disaster-related programs, services, and  
26 activities, including planning, preparation, testing of preparedness, notification, community evacuation  
27  
28

**Statement of Interest of the United States of America**

1 and transportation, emergency sheltering, temporary lodging and housing, social services and emergency-  
2 and disaster-related programs, emergency medical care and services, and transitioning back to the  
3 community. See Chapter 7, ADA Tool Kit. The first three activities – planning, preparation, and testing  
4 of preparedness – are all part of a public entity’s emergency management program that must occur *before*  
5 a disaster, and must address the needs of people with and without disabilities. The remaining activities  
6 also require advance planning and preparations. The City’s emergency plans fail to address the rights of  
7 individuals with disabilities for any of these issues or phases of emergency management.  
8

9 ***A. The Equal Opportunity Guarantees of the ADA and Section 504 in Emergency  
10 Management Cannot Be Met Without an Integrated Plan.***

11 The Title II and Section 504 regulations provide a number of specific prohibitions of  
12 discrimination that apply across the spectrum of emergency management. See generally 28 C.F.R. §§  
13 35.130, 35.149-151, 35.160; 28 C.F.R. pt. 41. Of fundamental importance, however, is the integration  
14 mandate, which requires public entities to “administer services, programs, and activities in the most  
15 integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R.  
16 § 35.130(d); see also 28 C.F.R. § 41.51(d) (same under Section 504). Eleven years ago, the Supreme  
17 Court explained the integration mandate of the ADA and Section 504: “Unjustified isolation, we hold, is  
18 properly regarded as discrimination on the basis of disability.” Olmstead v. L.C., 527 U.S. 581, 597, 119  
19 S. Ct. 2176, 144 L. Ed. 2d 540 (1999). This holding reaffirmed what the Department had observed in the  
20 Preamble to its Title II Regulation: “Integration is fundamental to the purposes of the Americans with  
21 Disabilities Act. Provision of segregated accommodations and services relegates persons with disabilities  
22 to second-class status.” 28 C.F.R. pt. 35, App. A; see also Arc of Wash. State Inc. v. Braddock, 427 F.3d  
23 615, 618 (9th Cir. 2005).  
24

25 Emergency management programs, services, and activities include the affirmative provision of  
26 life-sustaining goods, services, information, and facilities – including, *inter alia*, medical assistance,  
27 triage, food and other provisions, safety, comfort, a sheltering environment, and case management. Under  
28

**Statement of Interest of the United States of America**

1 Title II and Section 504, public entities are required to provide resources and services that individuals  
2 with disabilities can readily access and use. 28 C.F.R. §§ 35.130, 35.149-151. This includes disability-  
3 related services for individuals who do not have access to their social support network (e.g., transferring  
4 assistance, bowel and bladder management, assistance in dressing, bathing, and wayfinding), necessary  
5 “consumable medical supplies” (e.g., sterile catheters, colostomy bags), and “durable medical equipment”  
6 and other disability-related equipment (e.g., wheelchair battery charger, walkers, crutches, canes). See 28  
7 C.F.R. § 35.130; Chapter 7, ADA Tool Kit, add. 2; FEMA, Guidance on Planning for Integration of  
8 Functional Needs Support Services in General Population Shelters (Interim 2010); Goodman v. Georgia,  
9 546 U.S. 151, 156, 126 S. Ct. 877, 163 L. Ed. 2d 650 (2006) (noting medical services covered as  
10 programs, services, and activities under Title II); Yeskey, 524 U.S. at 210 (finding Title II applies to  
11 essentially everything a prison does with respect to inmates, regardless of whether it is voluntary).  
12 Emergency management programs also involve the delivery of vital information, which must include the  
13 use of auxiliary aids and services to achieve effective communication with individuals who are deaf or  
14 hard of hearing, are blind or have low vision, or have speech disabilities. 28 C.F.R. §§ 35.160-164.  
15 Facilities used during disasters, such as emergency shelters, must also be physically accessible. 28 C.F.R.  
16 §§ 35.130, 35.149-151.

17  
18  
19 Because of the exigent circumstances inherent in disasters, advance *planning* and *preparation* for  
20 these goods, services, auxiliary aids, and facilities are imperative. As FEMA’s Administrator Craig  
21 Fugate recently explained at the 2010 Inclusive Hurricane Conference: “[I]f we wait and plan for people  
22 with disabilities after we write the basic plan, we fail.”<sup>4</sup> An emergency management plan that integrates  
23 the rights of individuals with disabilities throughout is the cornerstone for a successful, nondiscriminatory  
24

25  
26 <sup>4</sup> See Prepared Testimony Before the House Comm. on Homeland Security, Subcomm. on Emergency  
27 Comm., Prep., and Response (June 15, 2010) (Marcie Roth, Director, Off. of Disability Integr. and  
28 Coord., FEMA, Dept. of Homeland Security) at  
[http://www.fema.gov/txt/about/odc/written\\_statement\\_roth.txt](http://www.fema.gov/txt/about/odc/written_statement_roth.txt).

1 emergency management response and recovery. As the evidence plainly shows, the City lacks this type of  
2 integrated plan and is unprepared to comply with the integration mandate of ADA and Section 504 in an  
3 emergency or disaster.

4 ***B. The City's Defenses Are Not Supported by the Facts or the Law.***

5 1. *Ad Hoc* "Reasonable Accommodations" During a Disaster Are, by Themselves,  
6 Inadequate.

7 The City contends that it can meet the needs of individuals with disabilities during the exigent  
8 circumstances of emergencies by granting "reasonable accommodations" when individuals with  
9 disabilities request them. See Defs.' Mem. Opp. Summ. J. 3. It is true that localities are required to  
10 provide reasonable modifications of policies, practices, and procedures – often referred to as "reasonable  
11 accommodations" – during emergencies when they requested. For example, if a public entity has a policy  
12 of providing certain types of assistance to the general public only at emergency shelters (e.g., assistance in  
13 applying for emergency financial assistance), the ADA and Section 504 may require a reasonable  
14 modification of that policy in which people with disabilities can receive such assistance, upon request, in  
15 their homes. However, general assurances to individuals with disabilities of an *ad hoc* response during  
16 the exigencies of an emergency are not equal to the access being afforded to individuals without  
17 disabilities, for whom planning and preparations have already occurred. See City of Los Angeles, EOO  
18 Master Plan, at <http://emergency.lacity.org/epdp2a3a.htm>. It is simply unrealistic to assume that  
19 physically accessible shelters, wheelchair-accessible transportation, and the ready availability of  
20 disability-related medications, medical supplies, equipment, and disability-related support services can be  
21 provided in an *ad hoc* manner when requested, without advance planning and preparations. See Chapter 7,  
22 ADA Tool Kit. For example, ensuring emergency shelters have backup generators for charging and  
23 operating assistive technology, e.g., Plaintiff Audrey Harthorn's wheelchair (Compl. ¶ 16), and  
24 communications devices for persons who are deaf, and air conditioning for people with disabilities who  
25 cannot independently regulate their body temperature cannot be met with an *ad hoc* approach that lacks  
26  
27  
28

**Statement of Interest of the United States of America**

1 advance planning and preparation.

2 2. The Outlay of Funds is not Tantamount to a Fundamental Alteration or Undue  
3 Financial and Administrative Burden.

4 In general, the ADA does not require any action that would result in a fundamental alteration in  
5 the nature of a service, program, or activity or that would impose undue financial and administrative  
6 burdens. 28 C.F.R. §§ 35.130(b)(7), 35.150(a)(3), 35.164. However, the fact that public entities are  
7 already planning to provide and fund life-sustaining goods and services to the public generally belies such  
8 arguments in the emergency management context. The entire purpose of emergency management  
9 programs is to provide life-sustaining goods and services. See, e.g., City of Los Angeles, EOO Master  
10 Plan, at <http://emergency.lacity.org/epdp2a3a.htm> (objectives of the LAEMA EOO Master Plan are to,  
11 among others, save lives, protect property, repair and restore essential systems and services, and provide  
12 for the protection, use, and distribution of resources). The Ninth Circuit has explained that “policy  
13 choices that isolate the disabled cannot be upheld solely because offering integrated services would  
14 change the segregated way in which existing services are provided.” Townsend v. Quasim, 328 F.3d 511,  
15 516 (9th Cir. 2003).

16  
17 Further, “[i]f every alteration in a program or service that required the outlay of funds were  
18 tantamount to a fundamental alteration, the ADA’s integration mandate would be hollow indeed.” Fisher  
19 v. Oklahoma Health Care Auth., 335 F.3d 1175, 1183 (10th Cir. 2003). Congress was aware that  
20 integration “will sometimes involve substantial short-term burdens, both financial and administrative,”  
21 but the long-term effects of integration “will benefit society as a whole.” Id. Integrating individuals with  
22 disabilities into all phases of emergency management will not only benefit society but will also save lives.

23  
24 Defendants bear the burden of proving that an activity results in an undue financial and  
25 administrative burden. This burden cannot be met absent a written analysis, signed by a high ranking  
26 official of the public entity asserting this defense, which includes a consideration of *all* resources  
27 available for use in the funding and the operation of the service, program, or activity, including non-profit,  
28

**Statement of Interest of the United States of America**

1 for-profit, federal, state, neighboring locality, and volunteer assistance and donations. 28 C.F.R. §§  
2 35.150(a)(3), 35.164. The evidence is clear: That burden has not been – and cannot be – met in this case,  
3 particularly where the City is allocated very large amounts of funding for emergency management and  
4 many other activities.

5 3. Integrated Emergency Management Can Have Fiscal Benefits.

6 While some emergency managers may focus on the costs of ADA and Section 504 compliance,  
7 they often neglect to consider the integration mandate’s practical consequence of maximizing available  
8 resources. As FEMA explains in its Section 689 Guidelines, which were promulgated in response to  
9 Congressional directives: “The provision of services such as sheltering, information intake for disaster  
10 services, and short-term housing in integrated settings keeps individuals connected to their support system  
11 and caregivers and avoids the need for disparate service facilities.” FEMA, Section 689 Guidelines,  
12 Nondiscrim. Principles of the Law, at <http://www.fema.gov/oer/reference/index.shtm>. The Supreme  
13 Court reached a comparable conclusion in Olmstead: “Rejecting the State’s ‘fundamental alteration’  
14 defense, the [district] court observed that existing state programs provided community-based treatment of  
15 the kind for which [the plaintiffs] qualified, and that the State could ‘provide services to plaintiffs in the  
16 community at considerably *less* cost than is required to maintain them in an institution.’” 527 U.S. at 594-  
17 95.

18 Often, individuals with disabilities seek shelter with their family, friends, neighbors, and co-  
19 workers – all individuals who may provide disability-related assistance in shelters and, thereby, reduce  
20 demands on public resources. Segregating individuals with disabilities away from their family, friends,  
21 and the rest of the population has the adverse effect of stressing precious resources. It forces individuals  
22 with disabilities to seek assistance in facilities intended to address acute medical needs, such as  
23 emergency rooms, hospitals, and medical shelters – even if those facilities lack the capacity to admit, or in  
24 fact will not admit, such individuals because they lack acute medical needs. See, e.g., NCD, The Needs of

1 People with Psychiatric Disabilities During Hurricanes Katrina and Rita (2006) at  
2 <http://www.ncd.gov/newsroom/publications/2006/peopleneeds.htm> (discussing segregated emergency  
3 management response). During disasters, medical facilities typically experience a surge that exceeds their  
4 capacity. Localities have improperly directed individuals with disabilities to these facilities even if they  
5 do not require medical services, exacerbating those surges and unnecessarily taxing medical resources.  
6 As the NCD reports make clear, there have been circumstances where these medical facilities would not  
7 admit individuals with disabilities because they did not have medical conditions – just disability-related  
8 needs that emergency managers had neglected to plan to meet in mass care emergency shelters. As a  
9 result, individuals with disabilities have been left without facilities in which to shelter. There have also  
10 been many circumstances where individuals with disabilities were unjustifiably institutionalized simply  
11 because emergency managers had not planned to meet their disability-related needs in emergency shelters,  
12 in complete contravention of the integration mandate and Olmstead. 527 U.S. 581, 587; 28 C.F.R. §  
13 35.130(d).  
14

15  
16 4. The Personal Devices and Services Exemption Does Not Apply in the Emergency  
17 Management Context.

18 In its Opposition brief, the City of Los Angeles contends that it is not obligated to provide  
19 personal assistive devices or medications to individuals with disabilities during disasters, relying  
20 erroneously on 28 C.F.R. § 35.135. Defs.’ Mem. Opp. Summ. J. 1. While Section 35.135 of the Title II  
21 regulation provides a *general* exclusion from providing such items in programs where provision of goods  
22 and services is not part of the program, this regulatory provision is not applicable to all programs. 28  
23 C.F.R. pt. 35, App. A (noting that the § 35.135 restrictions only apply to those areas *where relevant*).  
24 When the purpose of a program is to sustain life by providing goods (e.g., food, cots, blankets), services  
25 (e.g., first-responder and medical response and stabilization, triage, case management, security), and  
26 facilities (e.g., transportation vehicles, sheltering, toilet facilities, showers) in response to a disaster, the  
27 restrictions in Section 35.135 do not apply. As the Department of Justice’s Title II Technical Assistance  
28 **Statement of Interest of the United States of America**



1 Manual explains: “Of course, if personal services or devices are customarily provided to the individuals  
2 served by a public entity, such as a hospital or nursing home, then these personal services should also be  
3 provided to individuals with disabilities.” Title II Technical Assistance Manual § II-3.6200; 28 C.F.R. pt.  
4 36, App. A at 704 (providing same with respect to senior center in the context of Title III of the ADA,  
5 which applies to private entities). As the Department of Justice explained in 1991 in the Preamble to its  
6 Title II regulation:

7 [P]ublic entities may not require that a qualified individual with a disability be  
8 accompanied by an attendant. A public entity is not, however, required to provide  
9 attendant care, or assistance in toileting, eating, or dressing to individuals with disabilities,  
10 *except in special circumstances, such as where the individual is an inmate of a custodial or  
correctional institution.*

11 28 C.F.R. pt. 35, App. A (emphasis added); Stinson v. United States, 508 U.S. 36, 45, 113 S. Ct. 1913,  
12 123 L. Ed. 2d 598 (1993) (Preambles and commentaries accompanying regulations, like the regulations  
13 themselves, are entitled substantial deference as both are part of a department’s official interpretation of  
14 legislation); Auer, 519 U.S. at 461 (Department’s interpretation of its own regulations and technical  
15 assistance merits substantial deference).

16  
17 Emergency management is another example of special circumstances. Medical services,  
18 individualized assistance by first-responders, life-sustaining food, medication, medical care, durable  
19 medical equipment, and a sheltering environment are central to the City of Los Angeles’ emergency  
20 response. See, e.g., City of Los Angeles, EOO Master Plan, Public Welfare and Shelter Division, at  
21 <http://emergency.lacity.org/epdp2a3a4a.htm>. The entire purpose of the program is to support people with  
22 goods, services, and facilities necessary for basic human functioning. Los Angeles and other localities  
23 must provide the goods, services, and facilities that will ensure equal opportunities and integration for  
24 individuals with disabilities. 28 C.F.R. §§ 35.130, 35.130(d); Olmstead, 527 U.S. at 587.

25  
26 5. Integrated Emergency Planning Cannot Be Delayed.

27 Plaintiffs’ challenge to the City’s emergency management plan – and, specifically, to the City’s

28 **Statement of Interest of the United States of America**

1 failure to integrate the rights and needs of individuals with disabilities throughout its plan – need not wait  
2 for an emergency to strike in order for the Court to find that ADA and Section 504 violations have already  
3 occurred. The ADA and Section 504 do not require individuals with disabilities to experience  
4 discrimination during a disaster before they can challenge a public entity’s discriminatory emergency  
5 planning and preparations. The Title II regulation required localities to evaluate programs, services, and  
6 activities close to twenty years ago, and to ensure these activities were not discriminatory. See 28 C.F.R.  
7 §§ 35.105, 35.130. Furthermore, the Title II regulation affirmatively requires that a public entity’s  
8 programs, services, and activities be readily accessible to and usable by individuals with disabilities, 28  
9 C.F.R. §§ 35.149-151, and prohibits a public entity from determining the site or location of a facility or  
10 making selections that “have the effect of excluding individuals with disabilities from, denying them the  
11 benefits of, or otherwise subjecting them to discrimination.” 28 C.F.R. § 35.130(b)(4)(i).

13         Emergency planning and preparations to respond, mitigate, and recover are constant obligations.  
14 Planning and preparations to meet the emergency- and disaster-related needs of citizens generally, without  
15 regard to the rights and needs of individuals with disabilities, is plain and simple discrimination. 42  
16 U.S.C. § 12132; 29 U.S.C. § 794(a). See also Townsend, 328 F.3d at 516 (holding by Ninth Circuit that  
17 individual with diabetic peripheral vascular disease and amputation of both legs who was at risk of losing,  
18 *but had not yet lost*, community-based assistance, could still prevail on his Title II disability  
19 discrimination claim). In the emergency management context – in light of the exigencies, the  
20 unpredictability and likelihood of disasters, and the numerous obligations to ensure equal opportunity that  
21 cannot be met without advance planning – individuals with disabilities (and consequently the Plaintiffs in  
22 this case) are “threatened with a ‘concrete and particularized’ legal harm, coupled with ‘a sufficient  
23 likelihood that [they] will again be wronged in a similar way.’” Bird v. Lewis & Clark College, 303 F.3d  
24 1015 (9th Cir. 2002) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L.  
25 Ed. 2d 351 (1992) and City of Los Angeles v. Lyons, 461 U.S. 95, 111, 103 S. Ct. 1660, 75 L. Ed. 2d 675  
26  
27  
28

**Statement of Interest of the United States of America**

1 (1983)).

2 6. Equal Opportunity Under Title II Requires Compliance with the Regulation.

3 Some discussion is raised by the parties concerning the “meaningful access” requirement, a  
4 concept formulated in case law by the Supreme Court in Alexander v. Choate, 469 U.S. 287, 83 L. Ed. 2d  
5 661, 105 S. Ct. 712 (1985), under Section 504 before the ADA became law and several years before the  
6 Department’s regulations implementing Title II of the ADA were issued. While the parties agree that  
7 “meaningful access” must be afforded under Title II and Section 504, their memoranda devote relatively  
8 little discussion to the regulatory provisions that plainly must inform the meaning of this term. Equal  
9 opportunity and nondiscrimination in the emergency management context require compliance with Title II  
10 requirements, including those set out in the Department’s Title II regulation at 28 C.F.R. pt. 35, subpt. A.

12 In addition to the integration mandate and the general obligation to not discriminate on the basis of  
13 disability in programs, services, and activities, the Title II regulation provides numerous other specific  
14 prohibitions of discrimination that also apply to emergency planning. For example, the Title II regulation  
15 prohibits the outright denial of the benefits of emergency management programs, services, and activities,  
16 28 C.F.R. § 35.130(b)(1), as well as unequal, different, or separate opportunities to participate in  
17 programs, services, and activities, 28 C.F.R. §§ 35.130(b)(ii)-(iv), (vii). Furthermore, public entities may  
18 not employ eligibility criteria that screen out or tend to screen out people with disabilities from program  
19 benefits or participation, 28 C.F.R. § 35.130(b)(8). In addition to the previously discussed obligation to  
20 make reasonable modifications (sometimes referred to as reasonable accommodations) in rules, policies,  
21 practices, or procedures, 28 C.F.R. § 35.130(b)(7), public entities must also provide sign language  
22 interpreters, provide accessible websites, furnish written materials in Braille and other alternative formats,  
23 and provide other auxiliary aids and services necessary to ensure effective communication with  
24 individuals with disabilities. Nor may public entities avoid these responsibilities by seeking to delegate or  
25 contract with third parties. See 28 C.F.R. § 35.130(b)(3); Chapter 7 of the ADA Tool Kit (“Th[ese]

28 **Statement of Interest of the United States of America**

1 requirement[s] appl[y] to programs, services, and activities provided directly by state and local  
2 governments as well as those provided through third parties, such as the American Red Cross, private  
3 nonprofit organizations, and religious entities.”); 42 U.S.C. §§ 12181-12189 (prohibiting discrimination  
4 by private entities).

5 In the emergency management context, for example, the Title II regulatory provisions would  
6 prohibit a public entity from:

- 7 • Denying an individual who uses a wheelchair the opportunity to evacuate because of a  
8 lack of accessible transportation;
- 9 • Excluding an individual from accessing a general population shelter and its toilet facilities  
10 because he or she requires transferring or toileting assistance;
- 11 • Denying an individual with diabetes sustenance from a food service program because the  
12 food and drink made available do not provide any items he or she can safely consume;
- 13 • Providing sleeping accommodations in shelters that accommodate the general public but  
14 do not provide stable, accessible cots that are at the right height to allow individuals with  
15 disabilities to transfer from wheelchairs;
- 16 • Providing services and facilities at a mass care shelter that are essential for daily living, in  
17 general, but requiring people who need disability-related assistance (“DRA”), consumable  
18 medical supplies (“CMS”), or durable medical equipment (“DME”) (collectively known  
19 as functional needs support services, “FNSS”) to bring their own or else go to a “special  
20 needs” or separate evacuation shelter; and
- 21 • Providing emergency management services through contractual or other arrangements  
22 with entities that do not comply with ADA requirements.

23  
24  
25  
26 These are but a few examples of the types of disability discrimination that can occur in emergency  
27 management. The Department has provided a much fuller explanation of the ADA’s nondiscrimination

28 **Statement of Interest of the United States of America**

1 obligations applicable to emergency management in Chapter 7 of the ADA Tool Kit, together with  
2 checklists that can be used by a public entity to achieve ADA compliance. Obviously, meeting these  
3 responsibilities *ad hoc* during disaster response is not possible without having planned, tested, trained,  
4 and prepared to meet them in advance. For this reason, Plaintiffs' Motion for Summary Judgment should  
5 be granted and the City should be ordered to amend and supplement its emergency management plan, and  
6 take all other steps required, to comply with ADA and Section 504 requirements, including those  
7 described in Chapter 7 of the ADA Tool Kit.  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**VI. CONCLUSION**

For the reasons stated herein, the United States respectfully requests consideration of this Statement of Interest in rendering any decisions in this litigation.

Respectfully submitted, this 7<sup>th</sup> day of October 2010.

ANDRÉ BIROTTE, JR.  
United States Attorney  
LEON W. WEIDMAN  
Chief, Civil Division

ERIC H. HOLDER, JR.  
Attorney General of the United States

THOMAS E. PEREZ  
Assistant Attorney General  
SAMUEL R. BAGENSTOS  
Principal Deputy Assistant Attorney General  
Civil Rights Division

JOHN L. WODATCH, Chief  
PHILIP L. BREEN, Special Legal Counsel  
JEANINE M. WORDEN, Deputy Chief  
DOV LUTZKER, Special Counsel

---

WILLIAM F. LYNCH, Trial Attorney  
Disability Rights Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W. (NYA)  
Washington, D.C. 20530  
Telephone: (202) 305-2008 (Lynch)  
Facsimile: (202) 514-7821  
[William.Lynch@usdoj.gov](mailto:William.Lynch@usdoj.gov)  
*Counsel for United States of America*