

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. \_\_\_\_\_

BAYLIN KYLE;  
RUDY SALAZAR; and  
COLORADO CROSS-DISABILITY COALITION, a Colorado Corporation;

Plaintiffs,

v.

CITY & COUNTY OF DENVER, INCLUDING ITS SHERIFF'S DEPARTMENT;  
ALVIN LACABE, in his official capacity as Manager of Public Safety for the City & County of Denver;  
WILLIAM LOVINGIER, in his official capacity as the Director of Corrections and Undersheriff for the City & County of Denver;  
ELIAS DIGGINS, in his official capacity as Division Chief for the County Jail Division for the City & County of Denver;

Defendants.

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**COMPLAINT**

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Plaintiffs, Baylin Kyle, Rudy Salazar and the Colorado Cross-Disability Coalition, by and through their attorneys, Carrie Ann Lucas and Kevin W. Williams of the Colorado Cross-Disability Coalition, King & Greisen, LLC, and Fox & Robertson, P.C., hereby bring this Complaint against the City & County of Denver, including its Sheriff's Department; Alvin LaCabe, in his official capacity as Manager of Public Safety for the City & County of Denver; William Lovingier, in his official capacity as the Director of Corrections and Undersheriff for the City & County of Denver; and Elias Diggins, in his official capacity as Division Chief for the

County Jail Division for the City & County of Denver.

## **INTRODUCTION**

1. Nearly twenty years after the Americans with Disabilities Act was passed, the City & County of Denver, its Sheriff's Department, and managers of the county jails and detention centers discriminate against people with disabilities by summarily isolating them, and by refusing to provide accommodations and modifications to policies, practices and procedures.

2. On July 12, 1990, Congress enacted the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, et seq., establishing the most important civil rights law for people with disabilities in our country's history.

3. Among the primary purposes of the ADA is ensuring that people with disabilities receive accommodations, including access to programs, services and activities offered by public entities such as the City and County of Denver.

4. The ADA also prohibits public entities such as the City & County of Denver and its departments and agencies from segregating individuals with disabilities solely because of their disability.

5. The City & County of Denver, and its departments and agencies, systematically discriminate against people with disabilities who have been detained or imprisoned at its city and county jails and detention centers, or otherwise have contact with the Police and Sheriff's departments.

6. Baylin Kyle and Rudy Salazar were federal inmates being housed at the Denver County Jail. Both men are wheelchair users. Despite no medical need for segregation, both men

were isolated and segregated from the general population, solely on the basis of their disabilities, and as such were unable to avail themselves of programs, activities and services offered by the jail to inmates.

### **JURISDICTION AND VENUE**

7. This action arises under the Constitution and laws of the United States and the State of Colorado, including Article III, Section 1 of the United States Constitution and 42 U.S.C. § 1983. Jurisdiction is conferred upon this court pursuant to 28 U.S.C. §§ 1331 and 1343, 42 U.S.C. § 1988, as amended by the Civil Rights Attorney Fee Award Act of 1976; 29 U.S.C. § 626(c)(1); and 28 U.S.C. §§ 1367(a) and 2201.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), as all of the events giving rise to the claims occurred in the District of Colorado

### **PARTIES**

9. Plaintiff Baylin Kyle (“Mr. Kyle”) was an inmate at the Denver county jail. Mr. Kyle is currently incarcerated at the Federal Correctional Institution in Sheridan, Oregon. Mr. Kyle is a Colorado Cross-Disability Coalition member.

10. Plaintiff Rudy Salazar (“Mr. Salazar”) was an inmate at the Denver county jail. Mr. Salazar is currently incarcerated at the U.S. Penitentiary in Terre Haute, Indiana. Mr. Salazar is a Colorado Cross-Disability Coalition member.

11. Plaintiff Colorado Cross-Disability Coalition (“CCDC”) is a Colorado non-profit corporation whose members are persons with disabilities and their nondisabled allies.

12. Defendant the City & County of Denver is a home rule municipality under Article

XX, § 6 of the Colorado Constitution. The Denver Sheriff's Department is a department within the City & County of Denver. The City & County of Denver and its Sheriff's Department's official customs, policies, practices, and/or procedures caused the deprivations of Plaintiffs' constitutional rights. On information and belief, Defendant City & County of Denver is a recipient of federal financial assistance.

13. At all times relevant hereto, Defendant Alvin LaCabe has been the Manager of Public Safety for the City & County of Denver.

14. At all times relevant hereto, Defendant William Lovingier has been the Director of Corrections and Undersheriff for the City & County of Denver.

15. At all times relevant hereto, Defendant Elias Diggins, has been Division Chief for the County Jail Division for the City & County of Denver.

#### **FACTUAL ALLEGATIONS**

16. Mr. Kyle was held as a pretrial detainee, and held post sentencing, while awaiting transfer to a federal facility, at the Denver County Jail ("DCJ) in 2007 and 2008.

17. Due to an incomplete spinal cord injury, Mr. Kyle uses a manual wheelchair. Mr. Kyle is unable to walk, and is substantially limited in major life activities, including, but not limited to walking.

18. Mr. Kyle was placed at the DCJ in April, 2007, and moved from DCJ in on or after April 13, 2008. Upon arrival at DCJ, Mr. Kyle never met with a classification officer.

19. Solely due to his wheelchair use, Mr. Kyle was placed in medical ward, "the Ward" or "4W". Mr. Kyle was placed there upon his arrival at DCJ. There was no medical

necessity for Mr. Kyle to be placed on the Ward, and Mr. Kyle did not see a physician until he had been at the DCJ for eleven months.

20. Solely due to his disability, Mr. Kyle was denied access to recreational, educational, religious, and rehabilitation programs, and denied access to the programs, services, activities, and benefits offered to other inmates at the DCJ who do not use wheelchairs.

21. Rudy Salazar (“Mr. Salazar”) was held as a pretrial detainee, as well as post sentencing while waiting transfer to a federal facility at the DCJ in 2007 and 2008.

22. Due to a spinal cord injury, Mr. Salazar uses a manual wheelchair. Mr. Salazar is unable to walk and is substantially limited in several major life activities, including, but not limited to walking.

23. Mr. Salazar was placed at the DCJ in December, 2007, experienced an extended hospitalization at Denver Health Medical facility for a pressure sore sustained at DCJ, and then returned to DCJ before being transferred to federal custody in July, 2008.

24. Upon his arrival, solely due to his wheelchair use, Mr. Salazar was placed on the Ward. There was no medical necessity for Mr. Salazar to be placed on a medical unit.

25. Solely due to his disability, Mr. Salazar was denied access to recreational, educational, religious, and rehabilitation programs, and denied access to the programs, services, activities, and benefits offered to other inmates at the DCJ who do not use wheelchairs.

26. The Ward has several windows leading outdoors, but those are all covered with curtains or other materials. Individuals housed at the Ward have no view of the outdoors. One window has a very small portion uncovered, and Ward inmates look through to try to catch

glimpses of the weather. The door to the Ward has a window, but it is covered, and there is a window leading to the guard station outside the Ward, but it too is covered, with paper. No DCJ staff remain in the Ward, and there is no direct observation of the Ward inmates. No medical staff remain in the Ward.

27. While the Ward has a roll-in shower, it does not have a shower chair. Mr. Kyle and Mr. Salazar were forced to shower on a plastic chair rather than a shower chair or bench. The plastic chair is not suitable for use as a shower chair because it does not afford a large enough seating area to shower, the chair slides around in the shower, has a slick surface, no drain holes, and no armrests or handles, and places inmates at risk of pressure sores. Mr. Salazar developed a pressure sore after injuring the skin over his tail-bone on the plastic chair he was forced to use as a shower chair.

28. Wheelchair users on the Ward were not permitted any gym time, and were rarely permitted outside exercise time. Inmates outside the Ward are permitted outdoor or indoor exercise for at least an hour daily.

29. Wheelchair users on the Ward were not permitted to purchase food or entertainment items from the commissary. They were only able to purchase stationary and hygiene items. Inmates outside the Ward are permitted to purchase all categories of items from the commissary.

30. Wheelchair users on the Ward were not permitted to attend religious services at the DCJ. Mr. Kyle was unable to marry his fiancé due to the inability to attend weekly marriage ceremonies. Inmates outside administrative segregation are permitted to attend religious

services, marriage ceremonies, and religious education opportunities.

31. Wheelchair users on the Ward had restricted law library time. Mr. Kyle and Mr. Salazar were only permitted 30 minutes in the law library twice a week, while non segregated inmates were permitted 4 hours three times a week.

32. The lack of library access was extremely problematic when Mr. Kyle was reviewing discovery documents in his criminal case. Discovery materials in Mr. Kyle's case filled more than 25 boxes. The discovery documents in Mr. Kyle's case were provided to him on disk. He could review the materials in the law library only, because that was the only place he could access necessary technology to review the documents. By the time he got his disk, accessed the computer, and loaded the files, he would only have 20 minutes of library time. In 20 minutes, he could only review a few pages of documents. The inability to access files hindered his ability to assist in his own defense.

33. Wheelchair users on the Ward were unable to participate in educational and recreational programs at the DCJ, including GED classes. Wheelchair users were also unable to become trustees or participate in any employment programs at the DCJ.

34. On information and belief, inmates who did not use wheelchairs were able to access a variety of programs aimed at enhancing the lives of prisoners while incarcerated. Some of the programs offered are G.E.D., domestic violence counseling, drug and alcohol counseling, religious counseling, aptitude and vocational testing, career counseling, life skills programs, and anti-recidivism programs.

35. Both Mr. Kyle and Mr. Salazar filed complaints about these and other forms of

discrimination, but their complaints were not redressed.

36. On information and belief, Defendants discriminate against other people with disabilities through their policies, practices and procedures, by failing to provide reasonable accommodations and modifications to policies, practices and procedures, and by isolating inmates and pretrial detainees with disabilities solely on the basis of their disability.

37. CCDC's purpose is to promote independence, self-reliance, and full participation for people with all types of disabilities and to combat discrimination that impacts people with disabilities, through direct services, education, research and training. As part of that purpose, CCDC seeks to ensure that people who use wheelchairs have access to -- and do not encounter discrimination in -- participating in government services, including services while detained or jailed.

38. CCDC engages in extensive outreach as well as advocacy and educational efforts to promote access for and combat discrimination against people with disabilities. This effort and this purpose have been and continue to be adversely affected by Defendants' violations of the Americans with Disabilities Act and Rehabilitation Act.

39. Defendants' actions have caused and continue to cause distinct, palpable, and perceptible injury to CCDC. Those injuries include but are not limited to those described herein.

40. CCDC has devoted resources, which could have been devoted to its other outreach, advocacy, and educational efforts, to communicating with Defendants in an attempt to secure accessible services, activities and programs.

41. CCDC has devoted resources, which could have been devoted to its other

outreach, advocacy, and educational efforts, to educate members and others who have been injured by Defendants' discrimination.

42. Defendants' discrimination has been and continues to be a barrier to the full participation of persons with disabilities and, therefore, frustrates CCDC's ability to achieve full inclusion for persons with disabilities. For example:

- a. Defendants' discrimination, in and of itself, isolates individuals with disabilities, preventing any inclusion with non-disabled individuals;
- b. Defendants' actions send the message that such discrimination continues to be acceptable at this time, and discourages people with disabilities from advocating for their own rights.

43. Defendants' discrimination has required and continues to require CCDC to make a greater effort -- and to allocate significant resources -- to educate the public that such discrimination is wrong and otherwise to counteract the adverse impact of such discrimination. This perceptibly impairs CCDC's counseling, advocacy, educational, and training missions.

44. CCDC also has devoted and continues to devote resources -- including but not limited to those devoted to the present lawsuit -- to identifying and counteracting the sources of discrimination in the community, including that of Defendants.

45. CCDC's injuries -- including, without limitation, those described herein -- are traceable to Defendants' discriminatory conduct alleged in this Complaint and will be redressed by the relief requested in it.

46. CCDC's members include individuals who have mobility impairments and who

use wheelchairs and other assistive devices.

47. CCDC's members have been injured and will continue to be injured by Defendant's discrimination described above.

48. The elimination of discrimination, such as that of Defendant, and the integration of persons with disabilities into the community are at the core of CCDC's organizational purpose.

49. The participation of individual CCDC members in the lawsuit is not required either to resolve the claims at issue or to formulate relief.

**FIRST CLAIM FOR RELIEF**

(Violations of Section 504 of the Rehabilitation Act of 1973)

50. Plaintiffs reallege and incorporate by reference the allegations set forth in this Complaint as if fully set forth herein.

51. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794(a), provides in pertinent part:

No otherwise qualified individual with a disability in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

52. Defendants have discriminated against Plaintiffs on the basis of disability in violation of 29 U.S.C. § 794 and its implementing regulations as more fully described above. Such discrimination includes but is not limited to failure to provide reasonable modifications and accommodations, and the imposition of segregation solely on the basis of disability.

53. Defendant has acted with deliberate indifference to the strong likelihood that pursuit of Defendant's questioned policies, and failure to provide accommodations and modifications would likely result in a violation of federally protected rights.

54. Mr. Kyle and Mr. Salazar are individuals with a disability within the meaning of the Rehabilitation Act of 1973.

55. Mr. Kyle and Mr. Salazar were qualified to participate in the services, programs, activities, and benefits provided to prisoners at the DCJ facility,.

56. CCDC's members are individuals with disabilities, and are qualified to participate in the services, programs, activities and benefits of Defendants' within the meaning of the Rehabilitation Act of 1973.

57. The City and County of Denver and its Sheriff's Department receive and benefit from federal financial assistance as that term is used in 29 U.S.C. § 794.

58. The City and County of Denver and its Sheriff's Department denied Mr. Kyle and Mr. Salazar access to programs, benefits and services provided to other prisoners at the DCJ solely on the basis of their disabilities and for which they were qualified to participate in, thereby violating the Rehabilitation Act of 1973.

59. The Defendants excluded Mr. Kyle and Mr. Salazar from participation in their services, programs and activities, and have denied them the rights and benefits accorded to other prisoners and detainees, solely by reason of their disabilities in violation of Section 504. In addition, Defendants have violated Section 504 by intentionally failing or refusing to provide reasonable accommodations and modifications to policies, practices and procedures to Mr. Kyle,

Mr. Salazar, and other persons with disabilities.

60. The Defendants have willfully disregarded their duties under Section 504 and have knowingly allowed unlawful conditions and practices to continue at the DCJ facilities for prolonged and unreasonable periods of time.

61. Despite the clear provisions of the Rehabilitation Act of 1973, the Defendants persisted in imposing conditions and practices which discriminate against Mr. Kyle, Mr. Salazar and other wheelchair users.

62. As a direct and proximate result of the acts, omissions, and violations alleged above, Plaintiffs have suffered damages, injuries, pain and suffering, inconvenience, emotional distress, impairment of quality of life.

63. Plaintiffs have been injured and aggrieved by and will continue to be injured and aggrieved by Defendants' discrimination.

**SECOND CLAIM FOR RELIEF**  
(Violations of the Americans with Disabilities Act)

64. Plaintiffs reallege and incorporate by reference the allegations set forth in this Complaint as if fully set forth herein.

65. The Americans with Disabilities Act (hereinafter referred to as the "ADA"), 42 U.S.C. §§ 12101 et seq., and specifically 42 U.S.C. §§ 12131-12134, prohibits discrimination in public services on the basis of disability. 42 U.S.C. § 12132 provides:

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

66. The ADA defines a "public entity" to include any state or local government or any department, agency, special purpose district, or other instrumentality of a State or local government, 42 U.S.C. § 12131(1). The DCJ is a "public entity" within the meaning of the ADA.

67. Mr. Kyle had a physical impairment that substantially limited one or more of his major life activities and thus he was an individual with disabilities within the meaning of the ADA, 42 U.S.C. §12102(2).

68. Mr. Salazar has a physical impairment that substantially limits one or more of his major life activities and thus he is an individual with disabilities within the meaning of the ADA, 42 U.S.C. §12102(2).

69. CCDC 's members are individuals with disabilities within the meaning of the ADA, 42 U.S.C. § 12102(2), or are individuals associated with individuals with disabilities.

70. The Defendants excluded Mr. Kyle and Mr. Salazar from participation in their services, programs and activities, and have denied them the rights and benefits accorded to other prisoners and detainees, solely by reason of their disabilities in violation of the ADA. In addition, Defendants have violated the ADA by intentionally failing or refusing to provide reasonable accommodations and modifications to policies, practices and procedures to Mr. Kyle, Mr. Salazar, and other persons with disabilities.

71. The Defendants have willfully disregarded their duties under the ADA and have knowingly allowed unlawful conditions and practices to continue at the DCJ facilities for prolonged and unreasonable periods of time.

72. Despite the clear provisions of the ADA, the Defendants persist in imposing conditions and practices which discriminate against Mr. Kyle and Mr. Salazar and other persons with disabilities. An actual controversy exists between the parties entitling Plaintiffs to declaratory relief pursuant to 28 U.S.C. § 2201.

73. As a direct and proximate result of the acts, omissions, and violations alleged above, Plaintiffs have suffered damages, injuries, pain and suffering, inconvenience, emotional distress, impairment of quality of life.

#### **Relief Requested**

WHEREFORE, Plaintiffs respectfully request:

1. That this Court assume jurisdiction;
2. That this Court enter judgment in Plaintiffs' favor and against Defendants, jointly and severally;
3. That this Court declare the actions of Defendants described in this Complaint to be in violation of Titles II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act;
4. That this Court enter an injunction ordering Defendant to cease discrimination on the basis of disability at its jail;
5. That this Court award Plaintiffs compensatory damages under the Rehabilitation Act and Americans with Disabilities Act;
6. That this Court award Plaintiffs appropriate relief at law and equity;

7. That this Court grant declaratory judgment against the individually named Defendants in their official capacities and against the named entities, compensatory and consequential damages, including but not limited to damages for emotional distress, humiliation, loss of income and enjoyment of life, and other pain and suffering on all claims by law in the amount to be determined at trial against all Defendants, as allowed by law;

8. That this Court award attorneys' fees and costs of this action, including expert witness fees, on all claims allowed by law;

9. That this Court award pre-judgment and post-judgment interest at the lawful rate; and

10. That this Court award such additional or alternative relief as may be just, proper and equitable.

Respectfully submitted,

COLORADO CROSS DISABILITY COALITION

s/ Carrie Ann Lucas

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