Rights of Immigration Detainees with Disabilities

A quick guide for lawyers assisting disabled detainees

The Department of Homeland Security (DHS), its components, including Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE), and their contractors are **prohibited from discriminating against people with disabilities**.[[1]](#footnote-1) This means that individuals **arriving at airports and borders**, people in **immigration court**,and detainees **in federal, state, and private detention facilities** are **entitled to reasonable accommodations** to avoid disability discrimination.[[2]](#footnote-2) Be sure to ask for a **“reasonable accommodation,” describe disability, the accommodation, and the reason the accommodation is necessary**.

* **Examples of effective communication for deaf, hard of hearing, or blind detainees:**
	+ **Sign language interpreters** for people who are deaf, including interpreters in foreign sign languages such as Mexican Sign Language (LSM). If foreign sign language interpreters are not available, request a “Certified Deaf Interpreter” (CDI) or a “Deaf/Hearing Team.”[[3]](#footnote-3) A CDI can help bridge a sign language gap.
	+ **Videophones or captioned telephones** permitting deaf detainees to communicate with family, advocates, and lawyers.
	+ **Reading/translating written materials** for people who are blind.
	+ Ensuring **screen-based services** used by detainees are accessible.
* **Examples of accommodations for physical disabilities:**
	+ Accessible restrooms and showers.
	+ Accessible cells (bed; desk; maneuvering space) and common areas.
	+ Assistance with showering, dressing, and other activities of daily living.
	+ Front-cuffing for deaf detainees.
* **Uninterrupted access to appropriate medications and treatment**.

These protections are available to people with disabilities, defined (in part) as people who have a physical or mental impairment that substantially limits one or more major life activities.[[4]](#footnote-4) The following conditions would likely be considered disabilities under the law: blindness; deafness; paralysis or significant motor impairment; diabetes; cognitive disability; serious mental illness.[[5]](#footnote-5)

Fox & Robertson has significant experience with the rights of people with disabilities to receive public and private services without discrimination. We are ready to consult with other lawyers and advocates to enforce these rights. info@foxrob.com.

1. Section 504 of the Rehabilitation Act of 1973, [29 U.S.C. § 794](https://www.govinfo.gov/content/pkg/USCODE-2023-title29/html/USCODE-2023-title29-chap16-subchapV-sec794.htm) (federal government); Title II of the Americans with Disabilities Act, [42 U.S.C. § 12132](https://www.govinfo.gov/content/pkg/USCODE-2023-title42/html/USCODE-2023-title42-chap126-subchapII-partA-sec12132.htm) (state facilities), [6 C.F.R. pt. 15](https://www.govinfo.gov/content/pkg/CFR-2024-title6-vol1/xml/CFR-2024-title6-vol1-part15.xml) (DHS 504 regulations); [DHS Directive No. 065-01](https://www.dhs.gov/sites/default/files/publications/dhs-management-directive-disability-access_0.pdf); [DHS Instruction No: 065-01-001](https://www.dhs.gov/sites/default/files/publications/dhs-instruction-nondiscrimination-individuals-disabilities_03-07-15.pdf); [DHS, Guide 065-01-001-01](https://www.dhs.gov/sites/default/files/publications/disability-guide-component-self-evaluation.pdf) (“Guide”), at 23-24. [↑](#footnote-ref-1)
2. [28 C.F.R. § 35.130(b)(7)](https://www.govinfo.gov/content/pkg/CFR-2022-title28-vol1/xml/CFR-2022-title28-vol1-sec35-130.xml); *Alexander v. Choate*, 469 U.S. 287, 301 (1985); Directive 065-01, ¶ V(A)(2); Guide at 17-18. [↑](#footnote-ref-2)
3. [The Registry of Interpreters for the Deaf has a directory of sign language interpreters](https://myaccount.rid.org/Public/Search/Member.aspx). For a CDI, ✓ the □ for CDI. [↑](#footnote-ref-3)
4. [29 U.S.C. § 705(9)(B)](https://www.govinfo.gov/content/pkg/USCODE-2023-title29/html/USCODE-2023-title29-chap16-other-sec705.htm), incorporating [42 U.S.C. § 12102](https://www.govinfo.gov/content/pkg/USCODE-2023-title42/html/USCODE-2023-title42-chap126-sec12102.htm). [↑](#footnote-ref-4)
5. This list is by way of example only. Any condition that substantially limits a major life activity is included. [↑](#footnote-ref-5)