

Congress of the United States

Washington, DC 20515

May 10, 2023

Carol Mici
Commissioner
Massachusetts Department of Correction
50 Maple Street
Milford, MA 01757

Dear Commissioner Mici:

We have received numerous reports that individuals incarcerated at Massachusetts Department of Correction (DOC) facilities across Massachusetts are being denied access to accommodations for hearing disabilities, allegedly in violation of a federal settlement agreement.¹ Our constituents report that DOC recently limited access to specialized telephones used by deaf and hard-of-hearing individuals. Detained individuals are now seeking relief in federal court, alleging that DOC has violated an existing federal settlement agreement and has denied their ability to communicate with loved ones.² We write to express our deep concern about these allegations and to request additional information in order to assess them.

DOC is legally obligated to provide accommodations to deaf and hard-of-hearing individuals. In 2015, several incarcerated individuals with hearing disabilities filed a class action lawsuit against DOC in the U.S. District Court for the District of Massachusetts for failing to provide hearing-related assistance and accommodations.³ The court approved a settlement agreement requiring DOC to identify and provide vital accommodations to deaf and hard-of-hearing individuals detained in DOC facilities.⁴ Of note, the agreement requires DOC to provide certain individuals with access to captioned telephones (or “CapTels”),⁵ telephones that transcribe speech and display text on a built-in screen.⁶ For a detained individual who is deaf or hard-of-hearing, a CapTel can make the difference between being able to communicate with family, loved ones, and legal representatives, or being cut off from such support.

¹ Correspondence with Office of Senator Elizabeth Warren (On file with the Office of Senator Elizabeth Warren).

² Letter from Disability Law Center to Massachusetts Department of Correction, March 6, 2023 (On file with the Office of Senator Elizabeth Warren).

³ Civil Rights Litigation Clearinghouse, “Case: Briggs v. Mass. Dept. of Corrections,” November 24, 2015, <https://clearinghouse.net/case/17005/>.

⁴ Civil Rights Litigation Clearinghouse, “Document: Settlement Agreement (May 28, 2019),” May 28, 2019, pp. 9-10, <https://clearinghouse.net/doc/102593/>.

⁵ *Id.*, p. 38.

⁶ Commonwealth of Massachusetts, Department of Correction, “Standard Operation Procedure (SOP) 103 CMR 482, Telephone Access and Use,” June 2021, <https://www.mass.gov/doc/482-sop-telephone-access-and-use-videophone-captel-and-tty-devices-for-deaf-and-hard-of-hearing-inmates/download>.

Constituents have alerted us that DOC recently revoked access to CapTel for a significant number of incarcerated individuals.⁷ Plaintiffs' counsel in the federal lawsuit notified DOC on March 6 that its decision to deny CapTel access on the basis of new disability assessments may have violated the settlement agreement.⁸ We are aware that DOC maintains that its actions comply with the agreement,⁹ and are also aware that the parties appeared in federal court last month.

We are alarmed by the allegations that DOC has denied incarcerated individuals access to critical accommodations needed to effectively communicate, and that the agency may have done so in violation of a federal settlement agreement. We urge DOC to act in accordance with its responsibility to provide custody and care to individuals under its supervision.¹⁰

In order to assess the allegations against DOC, and to understand whether DOC's actions violate the rights of incarcerated individuals under federal law, we request answers to the questions below by no later than May 31, 2023. We also welcome further conversation with DOC and with Governor's office on this important matter, following this month's meeting between Senator Warren's staff, the Governor's office and senior staff from the Executive Office of Public Safety and Security. Thank you for your prompt attention.

1. Has DOC revised its Disability Accommodations Resource Assessments (DARA) since the 2019 settlement agreement in *Briggs v. Massachusetts Department of Correction*? If yes, please provide:
 - a. The date of any such revision(s).
 - b. The justification for any such revision(s).
 - c. An explanation for whether and how each revision complies with the *Briggs* settlement agreement.
2. Has DOC revoked access or denied new requests for access to CapTel devices since making the above-mentioned changes to the DARA?
3. Please provide:
 - a. The number of requests, broken down by facility and by month, that DOC received for access to CapTel devices from June 2019 to the present.
 - b. The number of instances, broken down by facility and by month, in which DOC has revoked previously approved access to CapTel devices.
 - c. The number of instances, broken down by facility and by month, in which DOC denied new requests for access to CapTel devices.

⁷ Correspondence with Office of Senator Elizabeth Warren (On file with the Office of Senator Elizabeth Warren); Letter from Disability Law Center to Massachusetts Department of Correction, March 6, 2023 (On file with the Office of Senator Elizabeth Warren).

⁸ Letter from Disability Law Center to Massachusetts Department of Correction, March 6, 2023 (On file with the Office of Senator Elizabeth Warren).

⁹ Letter from Massachusetts Department of Correction to Disability Law Center, April 5, 2023 (On file with the Office of Senator Elizabeth Warren).

¹⁰ Mass.gov, "Massachusetts Department of Correction," <https://www.mass.gov/orgs/massachusetts-department-of-correction>.

- d. For how many incarcerated individuals has DOC revoked previously approved access to CapTels after revising the DARA?
 - e. For how many incarcerated individuals has DOC denied new requests for access to CapTels after revising the DARA? How does that compare to the number of requests DOC has granted from June 2019 until the revision of the DARA?
4. Plaintiffs’ counsel reported that DOC revoked individuals’ access to CapTels “based on the decibel hearing loss of the prisoner.”¹¹ Has DOC denied access to accommodations, including to CapTels and pagers, based solely on the decibel hearing loss of the incarcerated individual? If so, what is the justification for that policy?
 5. Plaintiffs’ counsel notified DOC that they are concerned that DOC is “using threshold levels of hearing loss as a way of reducing the number of people entitled to accommodations.”¹² Has DOC relied on using threshold levels of hearing loss as an assessment factor as a way to reduce the number of people entitled to accommodations?
 6. DOC reportedly has been using “[g]uidelines ... developed by Wellpath, the DOC’s contracted medical provider, [to] address[] the varying degrees of hearing capabilities.”¹³
 - a. Please provide a copy of the guidelines used by Wellpath.
 - b. Please explain whether any guidelines utilized comply with the 2019 settlement agreement in *Briggs v. Massachusetts Department of Correction*, including the accommodations that must be provided to individuals for hearing-related disabilities?

Sincerely,

Elizabeth Warren
United States Senator

James P. McGovern
Member of Congress

Ayanna Pressley
Member of Congress

¹¹ Letter from Disability Law Center to Massachusetts Department of Correction, March 6, 2023, p. 1 (On file with the Office of Senator Elizabeth Warren).

¹² *Id.*, p. 2.

¹³ Letter from Massachusetts Department of Correction to Disability Law Center, April 5, 2023, p. 2 (On file with the Office of Senator Elizabeth Warren).