

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION**

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| <b>UNITED STATES OF AMERICA,</b>    | ) |
| <b>Plaintiff,</b>                   | ) |
|                                     | ) |
| <b>v.</b>                           | ) |
|                                     | ) |
| <b>INOVA HEALTH SYSTEM,</b>         | ) |
| <b>8110 Gatehouse Road</b>          | ) |
| <b>Falls Church, Virginia 22042</b> | ) |
| <b>Defendant.</b>                   | ) |
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**COMPLAINT IN  
INTERVENTION**

**Jury Trial Demanded**

**Related Case No. 1:10-cv-714-  
LMB/IDD**

**COMPLAINT IN INTERVENTION**

The United States of America (“United States”), for its Complaint, states and alleges upon information and belief as follows:

**INTRODUCTION**

1. This is a civil action brought by the United States to redress discrimination on the basis of disability in violation of title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181 *et seq.*, and that statute’s implementing regulation, 28 C.F.R. Part 36, as well as under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (“Rehabilitation Act”), and its implementing regulations, 45 C.F.R. Part 84.

2. The United States alleges that Defendant Inova Healthcare Services/Inova Health System Services, d/b/a/ Inova Health System (“Inova” or “Defendant”) failed to ensure that individuals who are deaf or hard of hearing are afforded opportunities to participate in or benefit from its services and facilities equal to the opportunities afforded others.

3. The United States Attorney General has reasonable cause to believe that Defendant has engaged in a pattern or practice of discrimination under title III of the ADA, 42 U.S.C. § 12188(b)(1)(B)(i), and its implementing regulation at 28 C.F.R. § 36.503(a). The United States also has reasonable cause to believe that the allegations of this Complaint raise issues of general public importance related to ensuring effective communication for people who are deaf or hard of hearing under 42 U.S.C. § 12188(b)(1)(B)(ii) and 28 C.F.R. § 36.503(b). The United States is authorized to intervene in a civil action to enforce the provisions of Section 504 of the Rehabilitation Act. 29 U.S.C. § 794a(a)(2); 42 U.S.C. § 2000h-3.

4. The United States seeks declaratory and injunctive relief, damages, and civil penalties against the Defendant.

#### JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 42 U.S.C. §§ 12188(b)(1)(B) and 28 U.S.C. §§ 1331 and 1345. The Court may grant declaratory and other relief pursuant to 42 U.S.C. §§ 12188(b)(2) and 28 U.S.C. §§ 2201 and 2202.

6. Venue lies in this District pursuant to 28 U.S.C. § 1391, because the claims arose in the Eastern District of Virginia.

7. This Court has personal jurisdiction over Defendant because Defendant resides in this District.

THE PARTIES

8. Plaintiff is the United States of America.

9. Defendant Inova is a private, not-for-profit healthcare provider, serving more than one million people annually. Defendant operates hospitals, outpatient services, assisted and long-term care facilities and healthcare centers throughout Northern Virginia. Among the hospitals that Defendant owns, leases to, or operates within the meaning of the ADA is Inova Fairfax Hospital (hereinafter, “Inova Fairfax” or “the Hospital”).

10. Defendant is a public accommodation within the meaning of title III of the ADA, 42 U.S.C. § 12181(7)(F), and its implementing regulation at 28 C.F.R. § 36.104. Further, Defendant employs more than fifteen persons and receives federal financial assistance within the meaning of the Rehabilitation Act, 29 U.S.C. § 794(a). Defendant and the Hospital operate programs or activities within the meaning of 29 U.S.C. § 794(b)(3)(A)(ii).

HISTORY OF ENFORCEMENT

11. On April 9, 2007, the Department of Justice entered into a settlement agreement with Defendant in order to resolve allegations that the Hospital failed to provide a deaf individual with appropriate auxiliary aids and services, including qualified sign language interpreters, when necessary for effective communication. Among other things, the agreement required the Hospital to (1) train its employees on the need to provide auxiliary aids and services to deaf patients and their companions; (2) designate one or more supervisory managers to be available 24 hours per day to answer questions and provide authorization for immediate access to appropriate auxiliary aids and services; (3) create a complaint resolution mechanism; and (4) provide sign language interpreters no later than two hours from the time an unscheduled request

for an interpreter is made to the interpreter service. The agreement remained in effect until October 2009.

### FACTUAL ALLEGATIONS

12. Maribel Heisley (“Mrs. Heisley”) and Stephen Andrew Heisley (“Mr. Heisley”) (collectively, “the Heisleys”) are individuals who are deaf, and are persons with disabilities under the meaning of the ADA, 42 U.S.C. § 12102; 28 C.F.R. § 36.104. They were otherwise qualified to receive benefits and services from the Hospital. Further, Mr. and Mrs. Heisley are qualified individuals with a disability pursuant to the Rehabilitation Act, 29 U.S.C. § 705(9).

13. Mrs. Heisley is able to vocalize and read lips more clearly than Mr. Heisley; however, they both need sign language interpreters to have effective communication with Hospital staff, especially about complex, lengthy, and important medical discussions.

#### **Delivery of Minor Son and Extended Hospital Stay**

14. On June 29, 2009, Mrs. Heisley went into labor and reported to the Hospital, with her husband, for the delivery of her baby. On an obstetrical history/assessment document completed upon the Heisleys’ arrival at the Hospital, a nurse identified the Heisleys as “hard of hearing.” During the obstetrical history/assessment, Mrs. Heisley requested a sign language interpreter.

15. Sign language interpreter Marcia MacNeil (“Interpreter MacNeil”) arrived within approximately two hours and provided interpreter services for the Heisleys. Interpreter MacNeil was present at the delivery of the Heisleys’ infant son, S.J.H. S.J.H. was delivered via caesarian section at 10:05 p.m. on June 29, 2009.

16. Shortly after S.J.H.'s delivery, Hospital staff identified health issues with S.J.H., including respiratory distress, and admitted S.J.H. to the Hospital's Neonatal Intensive Care Unit ("NICU") for further evaluation and care.

17. Mr. Heisley accompanied S.J.H. to the NICU. At the request of Hospital staff, Interpreter MacNeil went with Mr. Heisley to assist him in the NICU.

18. Mrs. Heisley remained in the operating room, without the benefit of an interpreter, while her surgical procedure was completed.

19. Starting at 10:30 p.m. and until her departure, Interpreter MacNeil split her time between Mr. Heisley, who was in the NICU, and Mrs. Heisley, who was moved from the operating room to a recovery area, and ultimately to a patient room. Hospital staff never made any efforts to secure a second interpreter even though they knew that two deaf individuals were in two different locations of the Hospital interacting with Hospital staff, yet sharing one interpreter.

20. At approximately 12:15 a.m. on June 30, 2009, Interpreter MacNeil recommended that nursing staff secure a replacement interpreter for her because she could not stay much longer. At 1:15 a.m., Interpreter MacNeil checked in with nursing staff and was told by them that she could go home, even though a replacement interpreter had not arrived. In fact, the Hospital made no arrangements to secure a replacement interpreter prior to Interpreter MacNeil's departure.

21. After S.J.H. was admitted to the NICU, Mr. Heisley requested another sign language interpreter from a nurse in the NICU.

22. Without the aid of an interpreter, Hospital staff attempted to have numerous communications with Mr. Heisley. For instance, staff in the NICU attempted to communicate

with Mr. Heisley on such topics as temperature probes, heart rate monitoring, oxygen saturation, monitoring of internal pressure via leads, the administration of intravenous fluids and nutrition, and electrocardiograms. Without a sign language interpreter, however, Mr. Heisley did not understand what staff was trying to explain to him.

23. At approximately 4:00 a.m. on June 30, 2009, the nurse in the NICU from whom Mr. Heisley requested an interpreter arranged with the Unit Secretary at the NICU front desk to call for a sign language interpreter. The Unit Secretary informed the NICU nurse, however, that the interpreter agency that was contacted did not have any interpreters available to fill that request, and that an interpreter would not likely be available until 7:00 a.m. Hospital staff made no other efforts to secure an interpreter until approximately three hours later.

24. At approximately 6:00 a.m. on June 30, 2009, doctors met with the Heisleys in order to obtain their consent to perform surgery on S.J.H. Although no sign language interpreter was present for this surgical consent meeting, doctors attempted to explain to the Heisleys that S.J.H. had Total Anomalous Pulmonary Venous Return (“TAPVR”), a rare congenital heart malformation that required open-heart, life-saving, and urgent surgery. During the meeting, doctors discussed cardiac anatomy, the effects of TAPVR on normal blood circulation through the body, the open heart surgical procedure that doctors proposed to perform, and the risks associated with that surgery.

25. The Heisleys did not have a clear or meaningful understanding of what was explained to them during the surgical consent meeting. In fact, during the meeting, the Heisleys relied on Mrs. Heisley’s father to repeat and paraphrase the information provided by the doctors so that the Heisleys might have a better chance of understanding. In the end, however, the Heisleys did not understand the nature of S.J.H.’s condition or the proposed surgery, and they

relied on Mrs. Heisley's father to make the decision for them about whether or not to consent to the procedure, because the Heisleys felt that they did not adequately grasp the complex medical information being relayed to them. Based on Mrs. Heisley's father's recommendation, they consented to the surgery.

26. At approximately 6:45 a.m. on June 30, 2009, a NICU Clinical Leader arrived to work and was told by staff to secure an interpreter for the Heisleys. Almost two hours later, a Patient Representative in the Hospital's Patient Relations Department, finally contacted an interpreting agency. An interpreter arrived several hours later. Interpreters were provided to the Heisleys until 8:00 p.m. that day.

27. S.J.H.'s surgery proceeded on June 30, 2009, and he was admitted to the Pediatric Intensive Care Unit ("PICU") thereafter.

28. By the evening of June 30, 2009, Hospital staff failed to consult with the Heisleys regarding their sign language interpreter needs for that evening. As a result, the Hospital arranged for interpreter coverage only until 8:00 p.m., leaving the Heisleys without interpreter coverage on the first night following their infant son's open-heart surgery, and at a time when Mrs. Heisley was herself still a patient at the Hospital recovering from her caesarian section.

29. Following the 8:00 p.m. departure of the scheduled interpreter on June 30, 2009, Mrs. Heisley spent time in the PICU, trying to learn as much information as possible about S.J.H.'s condition. Mrs. Heisley relied on handwritten communications with PICU staff to do so, but, in the end, she was not able to have meaningful communications with Hospital staff about her son's condition that evening.

30. During the course of S.J.H.'s extended stay in the Hospital, the Heisleys had numerous complaints about the interpreter coverage that the Hospital provided them. For

instance, when medical staff performed rounds on S.J.H. in the early morning hours, Mrs. Heisley was unable to ask questions she otherwise would have asked if an interpreter had been present. In addition, Mrs. Heisley witnessed certain medical staff “skip over” S.J.H.’s room, returning only to provide communications with Mrs. Heisley when an interpreter was present.

31. On numerous occasions, during hours when interpreters were not scheduled, urgent matters relating to S.J.H.’s still-delicate medical situation arose, necessitating doctors’ intervention at S.J.H.’s bedside. No interpreter assistance was available to facilitate timely communication between doctors and the Heisleys about these events or for other, less-urgent, communications regarding S.J.H.’s medical condition.

32. Mrs. Heisley complained directly about these interpreter coverage issues to the Hospital’s new Sign Language Services Manager. Mrs. Heisley specifically requested that more interpretation services be provided to her during hours outside of the interpreter schedule the Hospital created.

33. The Sign Language Service Manager did not relay these concerns or this request to other Hospital staff. Instead, to address Mrs. Heisley’s complaint, the Sign Language Service Manager attempted to personally provide sign language interpreter services at S.J.H.’s bedside in the morning, prior to the scheduled interpreters’ arrival, and attempted to check in at S.J.H.’s bedside at the end of the day. Due to her other job obligations, however, the Sign Language Manager was not able to consistently provide sign language interpreting services to the Heisleys prior to, and following, the departure of the scheduled sign language interpreters, which left the Heisleys without an interpreter during times in which the Heisleys needed one to have meaningful communications with Hospital staff.



34. Because Mr. Heisley's abilities to lip read and vocalize for himself were even more limited than those of his wife, the Heisleys feared allowing him to be the only family member at the Hospital with S.J.H., in the event that a medical issue arose (in the absence of an interpreter) requiring immediate communication or decision-making. As a result, the Heisleys decided to limit Mr. Heisley's time at the Hospital, opting only to have Mrs. Heisley or a hearing family member be alone with S.J.H. at his bedside.

35. S.J.H. was released from the Hospital on August 5, 2009.

#### **August 12, 2009 Emergency Visit to the Hospital**

36. On August 11, 2009, approximately one week after S.J.H.'s initial discharge from the Hospital, Mrs. Heisley took S.J.H. to the Hospital because he was vomiting uncontrollably.

37. To provide Mrs. Heisley with an interpreter, a Hospital Pediatric Cardiac Intermediate Care Unit nurse called an interpreter dispatch service at 12:40 a.m. on August 12. Nevertheless, an interpreter was not provided until approximately nine hours later.

38. In the intervening hours, Mrs. Heisley relied on hand gestures and references to prior medical records to communicate with Hospital staff about S.J.H.'s condition. Nevertheless, she was not able to understand what medical staff was trying to communicate to her.

### **CAUSES OF ACTION**

#### **COUNT I**

#### **Title III of the Americans with Disabilities Act**

39. The allegations of Paragraphs 1 through 38 of this Complaint are hereby re-alleged and incorporated by reference as if fully stated herein.

40. By failing to provide the Heisleys with needed sign language interpreters, Defendant denied them the full and equal benefit of communicating with health care professionals, understanding the medical treatment at issue, and participating in the medical care

of their son. Despite the Heisleys' requests for interpreters, Hospital personnel attempted to have lengthy, complex, and important medical communications with them when no interpreter was present, which resulted in a lack of effective communication.

41. Despite the fact that Defendant had numerous opportunities to provide more interpreters for the Heisleys and to expand the interpreter coverage for them, Hospital staff deliberately chose not to do so, leaving the Heisleys with less than what they needed for effective communication with staff.

42. Defendant discriminated against the Heisleys on the basis of disability in the full and equal enjoyment of its goods, services, facilities, privileges, advantages, and accommodations, in violation of title III of the ADA, 42 U.S.C. § 12182, and its implementing regulation at 29 C.F.R. Part 36. The Defendant's violations of title III include, but are not necessarily limited to:

- a) Failing to take such steps as necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than any other individuals because of the absence of auxiliary aids and services (including, but not limited to, qualified sign language interpreters) in violation of 42 U.S.C. § 12182(b)(2)(A)(iii), and its implementing regulation at 28 C.F.R. § 36.303; and
- b) Failing to afford an individual, on the basis of disability, with the opportunity to participate in or benefit from the services, facilities, privileges, advantages, or accommodations of Inova that is equal to that afforded to other individuals, in violation of 42 U.S.C. § 12182(b)(1)(A)(ii), and its implementing regulation at 28 C.F.R. § 36.202.

43. The Heisleys, and other individuals with disabilities who use sign language and/or who rely upon other auxiliary aids and devices for effective communication have been and will continue to be harmed if they seek future care (or accompany patients seeking care) at Inova unless Inova is required to provide effective communication and otherwise comply with the requirements of title III of the ADA and its implementing regulation.

**COUNT II**  
**Section 504 of the Rehabilitation Act of 1973**

44. The allegations of Paragraphs 1 through 38 of this Complaint are hereby re-alleged and incorporated by reference as if fully stated herein.

45. On multiple occasions, Defendant Inova failed to provide appropriate auxiliary aids to the Heisleys during the provision of health care services directly to Mrs. Heisley (for which Mr. Heisley was Mrs. Heisley's companion), and health care services provided to the minor son of the Heisleys, S.J.H.

46. The failure to provide such aids denied the Heisleys an equal opportunity to benefit from the services provided at the Hospital, in violation of 45 C.F.R. § 84.52(a)(4).

47. By denying the Heisleys the benefits of, and/or subjecting them to discrimination in the provision of, the services of the program or activity it conducts solely because of the Heisleys' disabilities, Defendant violated Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

48. The Heisleys, and other individuals with disabilities who use sign language and/or who rely upon other auxiliary aids and devices for effective communication have been and will continue to be harmed if they seek future care (or accompany patients seeking care) at Inova unless Inova is required to provide effective communication and otherwise comply with the requirements of the Rehabilitation Act.

WHEREFORE, Plaintiff United States of America prays that this Court:

- a) Grant judgment in favor of the United States and declare that the Defendant has violated title III of the ADA, 42 U.S.C. §§ 12181 *et seq.*, and its implementing regulation, 28 C.F.R. Part 36;
- b) Grant judgment in favor of the United States and declare that the Defendant has violated Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.
- c) Enjoin the Defendant, its officers, agents, and employees, and all other persons in active concert or participation with the Defendant, from discriminating against individuals who are deaf or hard of hearing;
- d) Order the Defendant to furnish appropriate auxiliary aids and services, including qualified and certified sign language interpreters, to patients who are deaf or heard of hearing, and to patients' family members and/or companions who are deaf or hard of hearing, where such aids and services are necessary for effective communication;
- e) Order the Defendant to develop and implement policies and procedures to provide all appropriate auxiliary aids and services, including qualified and certified sign language interpreters, when required for effective communication with (i) patients who are deaf or hard of hearing and/or (ii) patients' family members and/or companions who are deaf or hard of hearing;
- f) Order the Defendant to design and implement appropriate staff training programs to ensure that all personnel affiliated with Defendant who have

contact with members of the public (whether employees or independent contractors) are knowledgeable about the policies related to the provision of goods and services to persons with disabilities, including that each such person knows how to secure appropriate auxiliary aids and services for persons who are deaf or hard of hearing;

- g) Award monetary damages in an appropriate amount to Maribel Heisley and Stephen Andrew Heisley to compensate them for injuries resulting from discrimination on the basis of their disability, including damages for pain and suffering;
- h) Assess a civil penalty against the Defendant as authorized by 42 U.S.C. § 12188(b)(2)(C), to vindicate the public interest; and
- i) Order such additional and further relief as the interests of justice may require.

JURY DEMAND

The United States demands a trial by jury of all issues so triable pursuant to Federal Rule of Civil Procedure 38.

Respectfully submitted this 28 day of March, 2011

FOR THE UNITED STATES OF AMERICA

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