No. 13-1412

IN THE
Supreme Court of the United States

CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, ET AL.,

Petitioners,

v.

TERESA SHEEHAN,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF *AMICI CURIAE* OF THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AND NATIONAL SHERIFFS' ASSOCIATION IN SUPPORT OF PETITIONERS

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INTERESTS OF THE *AMICI CURIAE*[1]

The International Municipal Lawyers Association (IMLA) is a non-profit, nonpartisan professional organization consisting of more than 2500 members. The membership is comprised of local government entities, including cities, counties and subdivision thereof, as represented by their chief legal officers, state municipal leagues, and individual attorneys. IMLA serves as an international clearinghouse of legal information and cooperation on municipal legal matters. Established in 1935, IMLA is the oldest and largest association of attorneys representing United States municipalities, counties and special districts.

IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues

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[1] Pursuant to Supreme Court Rule 37.6 *amici curiae* affirm that no counsel for a party authored this brief in whole or in part, that no counsel or a party made a monetary contribution intended to the preparation or submission of this brief and no person other than *amici curiae*, their members, or their counsels made a monetary contribution to its preparation or submission.

Pursuant to Supreme Court Rule 37.2, the Respondents and the Petitioners received at least 10-days' notice of the intent to file this brief under the Rule, each party has consented to the filing of this brief, and copies of the consents are on file with the Clerk of the Court.

before the United States Supreme Court, the Unites States Courts of Appeals, and in state supreme and appellate courts.

The National Sheriffs' Association (the "NSA") is a non-profit association organized under § 501(c)(4). Formed in 1940, the NSA seeks to promote the fair and efficient administration of criminal justice throughout the United States, and, in particular, to advance and protect the Office of Sheriff throughout the United States. The NSA has over 20,000 members, and is the advocate for 3,083 sheriffs throughout the United States.

The NSA also works to promote the public interest goals and policies of law enforcement throughout the nation. It participates in judicial processes where the vital interests of law enforcement and its members are affected.

SUMMARY OF THE ARGUMENT

The ADA was intended to address not only intentional discrimination but the discrimination that occurs when policies and methods of service delivery are enacted by those who unthinkingly fail to consider the impact on the disabled. The ADA requires public entities to ensure their programs are accessible. However, the careful consideration required to avoid unintentional barriers is designed to occur at the level of resource management and policy.

By contrast, this Court's jurisprudence with respect to law enforcement actions in arrests affords officers broad discretion in their good-faith, reasonable decision-making based on the facts available at the moment, even if the decision appears incorrect in hindsight. The best method of accommodating the mentally ill, and equipping law enforcement officers to handle confrontations with the mentally ill safely, is to provide specialized training calibrated to local resources and needs. However, once that training is provided, individual officers should not be required to perform an ADA accommodations analysis, but rather should be afforded the broad discretion traditionally afforded under 42 U.S.C. § 1983.

ARGUMENT

Sheehan v. City & Cnty of San Francisco, 743 F.3d 1211 (9th Cir. 2014), puts before the Court an important issue involving the interaction between a federal law and the day to day responsibilities of the men and women who risk their lives to enforce law and protect the public. The Ninth Circuit's decision wrongly extends ADA analysis to life threatening confrontations between officers and the mentally disabled in a way that jeopardizes those officers and the public. The case forms the perfect tablet upon which this Court can define the reach of the ADA as it applies to the law of arrest.

The ADA was intended to reach beyond intentional discrimination by requiring entities to affirmatively ensure that their programs are

accessible and provided in the most integrated setting possible. However, this is not an absolute requirement. Rather, it involves careful consideration of the accommodations that are appropriate and reasonable in light of the entire budget available to the entity, but that would still accomplish the underlying goal of the program. As demonstrated in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), this can be a complicated multifactor analysis assessing the needs of the disabled individual in light of the entire program offered by the entity.

By contrast, traditionally, this Court's § 1983 and Fourth Amendment jurisprudence has been grounded in deference to officers' "split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving." *Graham v. Connor*, 490 U.S. 386, 397 (1989). Deference also includes a consideration of the safety of officers under threat, and awareness of the effect of hindsight on a court's evaluations of the wisdom of officers' actions. *Plumhoff v. Rickard*, 134 S.Ct. 2012, 2020-22 (2014).

Application of the Americans with Disabilities Act of 1990 ("ADA") to decision-making as applied to an arrest would demand that an officer deliver, in a matter of seconds, the considered accommodations of a clinical setting anticipated under Title II, when it would be more appropriate to adopt necessary programs in settings in which a locality can develop a policy of appropriate accommodations with studied deliberation. As officer training and mental health collaborative models continue to grow in impact and

effectiveness, municipalities and counties are the best equipped to design effective crisis response systems for their communities and it is those models that effect the accommodations demanded by the ADA. The ADA does not, and should not, fundamentally alter the principle that officers confronted with life-threatening circumstances must exercise the discretion this Court has granted them in emergency situations, for their protection and that of the public.

I. TITLE II OF THE ADA REQUIRES CAREFUL ANALYSIS OF APPROPRIATE ACCOMMODATIONS IN LIGHT OF AVAILABLE RESOURCES

Congress enacted Title II of the ADA to eradicate discrimination against individuals with disabilities by requiring state and local governments to make reasonable accommodations for persons with disabilities and to provide services in the most integrated setting appropriate. The evaluation of an entity's plan for providing services to mentally disabled individuals allows the entity to weigh such factors as the cost of treatment, the entity's budget, and the need for even-handed distribution of services to other disabled individuals. This analysis occurs at the level of policymaking, management and training, and is not suited for application to individual, on-the-street decision-making.

A. The ADA Was Passed to Address Policies Impacting the Disabled.

Seeing the limited effect of prior disability rights legislation in addressing discriminatory practices and policies, Congress expanded protection for individuals with disabilities by passing the ADA in 1990. Americans with Disabilities Act of 1990, Pub. L. No. 110-336, § 2(b), 104 Stat. 328 (1990) (codified as amended at 42 U.S.C. §§ 12101 et seq. (2012)). The Rehabilitation Act of 1973 had made some steps toward eradication of discrimination, but it only applied to governmental programs and services that received public funding. The U.S. Commission on Civil Rights concluded that "[d]espite some improvements [discrimination] persists in such critical areas as education, employment, institutionalization, medical treatment, involuntary sterilization, architectural barriers, and transportation." S. Rep. No. 101-116, at 8 (1989).

The ADA was enacted in 1990 to eliminate policies and procedures, as well as architectural barriers, that had continued discriminatory effect in these broader areas. Section 2(b) of the Act states that the purpose of the ADA is "to provide a national mandate to eradicate discrimination, to provide standards for addressing discrimination, to ensure the Federal Government has a central role in enforcing said standards." S. Rep. No. 101-116, at 2 (1989). The ADA outlined several areas in which it sought to protect against discrimination, including employment, public accommodations and services

operated by private entities, and, as relevant here, Title II relating to public services. *Id.* at 2-3.

B. Title II of the ADA is Addressed to Public Entities' Policies and Procedures, Rather Than to Individuals' Actions.

Title II of the ADA, which covers Public Services, applies to any department or instrumentality of State or local government. 42 U.S.C. §§ 12131-12132 (2012). Under Title II, public entities cannot exclude from participation, deny, or discriminate in regards to public benefits, programs, and activities on basis of disability. *Id.* Notably, the language of the statute is focused on the decisions and policies of the public entity: "[N]o qualified individual with a disability shall, by reason of such disability, … be subjected to discrimination *by any such entity.*" 42 U.S.C. § 12132 (emphasis added).

Further supporting the notion that the ADA is directed to agency-level decision-making, the Attorney General promulgated regulations requiring public entities to "make reasonable modifications" to its "policies, practices or procedures" to avoid "discrimination on the basis of disability." 28 C.F.R. § 35.130(b)(7) (2014). These regulations do not require measures that would "fundamentally alter" the nature of the entity's programs. *Id. See Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 591-92, 599-600

(1999). All of these regulations are stated in terms of what the "public entity" must or may not do.[2]

The mode of analysis of reasonable accommodations is designed for an entity's management-level assessment, in light of an overall view of the entity's programs. This Court has recognized that, while government agencies cannot avoid providing appropriate services to the mentally ill altogether based on budget concerns, they may demonstrate ADA compliance by establishing a carefully considered plan that might not provide immediate appropriate treatment for everyone who qualifies. In *Olmstead v. L.C.*, when two developmentally disabled women with mental illness sought to be moved from Georgia's public psychiatric hospital into community care, for which they had been evaluated and had been determined to be qualified, the state's essential defense was a cost-based defense: that moving these women into community care was impracticable given the state's mental health budget. *Olmstead*, 527 U.S. at 593-96 & n.7. Thus, the state reasoned, it was not discriminating against the plaintiffs "by reason of disability." *Id.* at 598. Instead, the state was making a decision by reason of the cost of community treatment. *Id.* at 598.

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[2] Granted, *respondeat superior* may apply to the actions of individual employees, but under *respondeat superior*, the focus is still on actions of the agency *through* its individual employees.

In rejecting this reasoning, the Court held that "Congress had a more comprehensive view of the concept of discrimination advanced in the ADA." *Id.* at 598. Notably, the Court observed that "Title II provides only that 'qualified individual[s] with a disability' may not 'be subjected to discrimination.'" *Id.* at 602. In *Olmstead*, the State's professionals had the opportunity to evaluate both plaintiffs and had determined that a less restrictive treatment setting was appropriate. *See id.* However, once individuals with mental disabilities are found to be "qualified" for less restrictive care, failing to do so is discrimination by reason of disability, unless, "in the allocation of available resources, immediate relief for the plaintiffs would be inequitable, given the responsibility the State has undertaken for the care and treatment of a large and diverse population of persons with mental disabilities." *Id.* at 604. Determining whether this defense applies requires case-by-case assessment of the cost of the treatment against the state's overall mental health budget. *Id.* A court must also assess as the state's plan for maintaining a range of treatment facilities and its need to administer facilities with an even hand. *Id.*

Accordingly, Title II of the ADA, and its implementing regulations, was aimed at eradicating public entities' policies and procedures that have the effect of excluding individuals from programs or discriminating on the basis of disability. The language of the statute and the regulations, and the jurisprudence interpreting the ADA, all of which focus on the actions and policies of the entity, stand

in stark contrast to § 1983, in which the focus of the analysis is on the actions of individuals.

II. QUALIFIED IMMUNITY AND FOURTH AMMENDMENT JURISPRUDENCE ALLOW LAW ENFORCEMENT TO EXERCISE MAXIMUM DISCRETION IN ARREST SETTINGS.

This Court's qualified immunity jurisprudence is grounded in the recognition that active executive decision-making is essential to the public interest. Fourth Amendment jurisprudence reiterates this principle by underscoring that police officers, in addition to receiving qualified immunity, are entitled to wide discretion in making an arrest, especially when the suspect is armed and poses a risk of harm to the public. Application of the ADA's thoughtful, entity-wide analysis to an individual officer's split-second decision-making during an arrest is inconsistent with the entity-focused analysis of the ADA and the broad discretion this court has typically granted to individual officers on the street.

A. The Court Established Qualified Immunity in Order to Give Wide Berth to Officers Making Split-Second Decisions

This Court has found that "one policy consideration seems to pervade the analysis [of immunity for executive action]: the public interest requires decisions and action to enforce laws for the protection of the public." *Scheuer v. Rhodes*, 416 U.S. 232, 241 (1974). Within this consideration, this Court

recognizes that, even though officers will not always make decisions that lead to positive outcomes, the correct analysis involves a consideration of the reasonableness of the officers' actions at the time of occurrence, in light of the facts known at that time.

Deference is a key part of the Court's immunity jurisprudence: "Implicit in the idea that officials have some immunity—absolute or qualified—for their acts, is a recognition that they may err." *Id.* at 242. By allowing for some margin of error, the Court avoids a chilling effect on law enforcement. *See id.* ("The concept of immunity assumes this and goes on to assume that it is better to risk some error and possible injury from such error than not to decide or act at all."). This is especially important because in situations where officers can only rely on second-hand information, and are then forced to make split-second decisions, the appropriate response may be unclear even in hindsight. *See id.* at 246-247 ("When a condition of civil disorder in fact exists, there is obvious need for prompt action, and decisions must be made in reliance on factual information supplied by others. … Decisions in such situations are more likely than not to arise in an atmosphere of confusion, ambiguity, and swiftly moving events and when, by the very existence of some degree of civil disorder, there is often no consensus as to the appropriate remedy.").

Scheuer accordingly recognized a "qualified immunity" for executive branch officers, "the variation being dependent upon the scope of discretion and responsibilities of the office and all

the circumstances as they reasonably appeared at the time of the action on which liability is sought to be based. It is the existence of reasonable grounds for the belief formed at the time and in light of all the circumstances, coupled with good-faith belief, that affords a basis for qualified immunity of executive officers for acts performed in the course of official conduct." *Id.* at 247-48.

The situation at Kent State addressed in *Scheuer* involved decisions by the governor and his aides, who had a high level of both responsibility and discretion. But the Supreme Court reaffirmed the concept of qualified immunity in *Harlow v. Fitzgerald*, stating more specifically that government officials "performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." 457 U.S. 800, 818 (1982). Indeed, only when every "reasonable official would have understood that what he is doing violates that right," would the officer be held liable for his official actions. *Ashcroft v. al-Kidd*, 131 S.Ct. 2074, 2078 (2011).

In sum, in the context of civil rights actions, it has been the policy of this Court to afford broad discretion to the actions of individual officers in order to facilitate quick, even if imperfect, decision making.

B. Substantive Law Regarding the Constitutionality of Arrests Provides an Additional Layer of Protection for Officers' Discretion.

Deference to officers' discretion is particularly strong in the context of arrest. Not only are officers afforded qualified immunity when exercising discretionary duties relating to an arrest,[3] but also the reasonableness of the arrest itself – the underlying Fourth Amendment claim[4] – is judged based "from the perspective of a reasonable officer on the scene," rather than an officer with perfect knowledge of all facts. *Graham*, 490 U.S. at 396. The fact that the officer's instincts turned out to be incorrect does not render the actions illegal. "The Fourth Amendment is not violated by an arrest based on probable cause, even though the wrong person is arrested, *Hill v. California*, 401 U.S. 797 (1971), nor by the mistaken execution of a valid search warrant on the wrong premises, *Maryland v. Garrison*, 480 U.S. 79 (1987)." *Id.* Additionally, the Fourth Amendment provides significant leeway for officers' decision-making in the interest of public safety and preservation of evidence, based on the officer's reasonable, articulable belief. It permits

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[3] *See Wilson v. Layne*, 526 U.S. 603 (1999) (finding that a media ride-along in an arrest violated the Fourth Amendment, but finding the officers entitled to qualified immunity).

[4] *See Saucier v. Katz*, 533 U.S. 194 (2001) (finding that the reasonableness inquiry for the underlying Fourth Amendment claim is separate from the qualified immunity determination).

officers to detain suspects briefly in order to investigate information amounting to less than probable cause, or to detain occupants of a house temporarily to safely effectuate a search warrant. *Michigan v. Summers*, 452 U.S. 692, 699-703 (1981).

In particular, as to excessive force claims, "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham*, 490 U.S. at 396-97. It is important to note that hindsight should not affect a court's decision: "Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers," violates the Fourth Amendment. *Id.* at 396; *see also Saucier v. Katz*, 533 U.S. 194, 205 (2001) ("If an officer reasonably, but mistakenly, believed that a suspect was likely to fight back, for instance, the officer would be justified in using more force than in fact was needed.").

The deference afforded to officers in excessive force cases is especially clear when the suspect possessed a weapon or had harmed another individual. As this Court pointed out, "if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm," deadly force is authorized. *Tennessee v. Garner*, 471 U.S. 1, 11-12 (1985). When a suspect is endangering the lives of others, officers are not obligated to select the "safe" option of

inaction over an action that is potentially deadly to the suspect but that is certain to end danger to bystanders. *See Scott v. Harris*, 550 U.S. 372, 385 (2007) ("We think the police need not have taken that chance [that the suspect would have stopped driving recklessly if the pursuit ended] and hoped for the best.").

Thus, in excessive force cases, as with all cases challenging the constitutionality of an arrest, "in addition to the deference officers receive on the underlying constitutional claim, qualified immunity can apply in the event the mistaken belief was reasonable." *Saucier,* 533 U.S. at 206. This deference is crucial to enabling officers to act based on the information available to them in the moment, without fear of liability constraining their willingness to make difficult decisions, including the use of potentially deadly force.

III. APPLICATION OF THE ADA IN THE CONTEXT OF ARRESTS UNDULY RESTRICTS THE ESTABLISHED DISCRETION OF POLICE OFFICERS.

Application of the ADA to law enforcement agencies at the policy and training level provides for a calibrated level of municipal discretion. This discretion is consistent with the principles undergirding municipal liability and provides the type of considered accommodation required by the ADA. Municipalities have provided accommodation, in part, by successfully developing and implementing mental health crisis response programs, but the

nature of these programs is largely dependent on other locally-available resources beyond the law enforcement agency's control.

While application of the ADA in the law enforcement context is appropriate at the policy level, it should not extend to individual officers' decisions in confrontations between the police and the mentally ill. Application of the ADA to the arrest context would strip officers of the discretion afforded them under this Court's § 1983 jurisprudence.

A. Successful Mental Health Crisis Intervention Models Rely Heavily on the Availability of Local Resources, and Must Be Implemented Based on Careful Consideration at the Agency Level.

As an initial matter, *amici* do not contend that the ADA does not apply at all to the manner in which law enforcement handles confrontations with mentally ill suspects, but rather that it applies to the agency's decision-making regarding policies and training rather than that of individual officers on the street.

Law enforcement agencies have been sensitive to the needs of individuals with mental illness by providing training of officers and collaboration with mental health providers, in large part because it enhances the safety of their officers and the public. In January 2014, the International Association of Chiefs of Police (the "IACP") developed and released a model policy, which reminds officers that they

must "make difficult judgments about the mental state and intent of the individual . . . [and] use . . . special police skills, techniques, and abilities to effectively and appropriately resolve the situation." INT'L ASS'N OF CHIEFS OF POLICE NAT'L LAW ENFORCEMENT POLICY CTR., *Responding To Persons Affected by Mental Illness or in Crisis* (Jan. 2014). The considerations that the IACP included in the policy are reflective of the type of accommodations provided to mentally ill suspects through mental health crisis response programs nationwide. And, in fact, as the respondent conceded, San Francisco had a crisis intervention program in place and properly trained its officers. *See Sheehan,* 743 F.3d at 1216-17.

The success of mental health crisis intervention models, however, rests on more than just training programs for officers. A successful program requires crisis response sites equipped to respond to psychiatric, substance abuse and medical emergencies; police must also secure no refusal policies and streamlined emergency intake. Henry J. Steadman et al., *A Specialized Crisis Response Site as a Core Element of Police-Based Diversion Programs*, 52(2) PSYCHIATRIC SERVICES 219 (2001).

So, even if a municipality has instituted an intensive training program, individual officers responding to calls in rural or disadvantaged communities with scant mental health resources may be unable to fully implement their training. A study of the Chicago CIT program found that CIT officers in districts with dense mental health

facilities resolved more encounters through referrals or without taking action compared to non-CIT officers, while CIT officers responding to calls in low-resource districts resolved disputes in the same manner as non-CIT officers. Amy C. Watson et al., *CIT in Context: The Impact of Mental Health Resource Availability and District Saturation on Call Dispositions.* 34(4) INT'L J. L. PSYCHIATRY 287 (2011).[5]

The infrastructure of a full-scale intervention program is simply infeasible for rural communities, where mental health facilities are remote, officers respond to calls alone, and backup may be dozens of miles away. According to the Bureau of Justice Statistics' latest census of law enforcement agencies almost half of the police agencies in this country have fewer than 10 officers and over 70% have fewer than 25 officers.[6] These smaller departments do not have the resources of major cities, nor the capability to bring psychologists to help in making arrests.

In light of the disparities between the resources available in various localities, determination of what the appropriate mental health crisis intervention

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[5] These findings held true even after controls for the level of the individual's resistance, suggesting that CIT training is similarly likely to fail officers in high pressure, violent encounters in low-resource areas. *Id.*

[6] Census of State and Local Law Enforcement Agencies 2008, Bureau of Justice Statistics, http://www.bjs.gov/index.cfm?ty=pbdetail&iid=2216 (last visited 6/24/2014).

model might be is a complicated one depending on multiple factors. An ADA analysis at the policy and training level would support the assessment of the program selected by the agency in light of the overall resources available to the agency, and, under *Olmstead*, it would offer the agency discretion as to its policies in implementing that program. However, imposing the ADA analysis on the moment of arrest would both ignore the contextual factors that shape outcomes of mental health crisis intervention and place the burden of achieving the benefits of a community-wide program on a single officer's decisions based on incomplete information and made under exigent circumstances.

B. Application of the ADA in the Arrest Context is Inconsistent with the Discretion Traditionally Afforded Law Enforcement Officers.

Even the most sophisticated training and mental health partnership model cannot eradicate dangerous confrontations with mentally ill individuals, and in those situations, once officers have been properly trained, the policies underlying the broad discretion this Court has given law enforcement officers in the arrest context still apply. An analysis of officers' actions on the street, as opposed to at the policy and training level, would hold officers to impossible standards in emergency situations, in contradiction to the discretion afforded them under the Court's Fourth Amendment jurisprudence.

Here, when Officers Holder and Reynolds attempted to take Ms. Sheehan into custody, they implemented recommended practices by attempting to subdue Ms. Sheehan with nonlethal force as she approached with the knife, to no avail. *Sheehan*, 743 F.3d at 1219-20. Officers Holder and Reynolds were relying on one of the most sophisticated and successful mental health crisis models in the nation, but their training could not prevent the violent encounter that ensued. If San Francisco's response is inadequate to meet the demands of the ADA, such a standard would present an impossible mandate for rural municipalities contending with fewer resources, sparse mental health facilities, and thinly staffed forces.

The volatile circumstances surrounding the arrest of a violent, armed individual defy the elements of ADA analysis, standing in sharp contrast to cases involving law enforcement encounters that courts have found require accommodations under the ADA. For example, courts have applied the ADA to the detainment and interrogation of individuals with hearing impairments to require predictable, standardized accommodations, such as the use of a qualified interpreter or an assistive communication device. *See, e.g., Bahl v. Cnty. of Ramsey*, 695 F.3d 778 (8th Cir. 2012). The requirement for a sign interpreter, however, is distinct from providing a "comfort zone" to mentally ill individuals who pose a threat to public safety because the accommodations that will resolve an accessibility problem for a hearing-impaired individual are predictable and can

be implemented by the law enforcement agency as an entity.

In contrast, when an officer faces an encounter with a violent, armed mentally ill individual, it is not clear, even in hindsight, which accommodations would have been successful. In fact, it may not always be clear to the officers whether the individual is even suffering from mental illness as opposed to the effects of drugs or alcohol. Similarly, it may be impossible for the officer to ascertain whether the individual has been taking medications to treat their condition, with this critical information often absent from a bench warrant or dispatch. Liz Navratil and Paula Reed Ward, *Mental Illness in Crime Suspects Gives Police Special Problems*. PITTSBURGH POST-GAZETTE, February 7, 2014, at A-1. Such uncertainties make it impossible to determine whether accommodations were required in the situation and what "reasonable accommodations" an officer should have offered.

Instead, the apprehension of an armed mentally ill individual is the exact embodiment of the "tense, uncertain, and rapidly evolving" situation in which officers have traditionally been afforded discretion in the civil rights arena. *Graham*, 490 U.S. at 397. Officers must rely on instinct and training to assess an individual's risk of harm to themselves or the public based on factors such as statements made by the individual, the amount of self-control displayed by the individual, and the volatility of the environment. *Id.*

It is in the context of confrontations with the mentally ill that the need for discretion in handling the situation is at its height. If officers are forced to make complex legal calculations assessing the reasonableness of each individual accommodation based on a multitude of factors, rather than simply relying on their training, hesitation and doubt will lead to more officer and civilian injuries and fatalities.

Courts often order mental evaluations of defendants to determine if the person suffers from a mental disability. These evaluations involve clinical analysis in the calm comfort of a quiet setting. The Ninth Circuit would require police officers to equally calmly assess a person's mental health on the spot, at a time when their lives are being threatened and when the public is at risk. This is inconsistent with the policies undergirding this Court's analysis of officers' conduct in arrest settings – allowing maximum discretion in order to facilitate decisive action. The question of whether a law enforcement agency has properly accommodated mentally ill individuals under the ADA should be analyzed with respect to the department's policies and training only; with respect to specific arrests of mentally ill individuals, the broad discretion afforded to individual law enforcement officers under § 1983 in arrest settings should remain in place.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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