

No. 19-56074

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

C.L.,

Plaintiff-Appellant,

v.

DEL AMO HOSPITAL, INC.,

Defendant-Appellee.

On Appeal from the United States District Court for the
Central District of California, Case No. 8:18-cv-00475-DOC
Hon. David O. Carter

**MOTION FOR LEAVE TO FILE BRIEF OF NATIONAL DISABILITY
RIGHTS NETWORK, AMERICAN ASSOCIATION OF PEOPLE WITH
DISABILITIES, AUTISTIC SELF ADVOCACY NETWORK, DISABILITY
RIGHTS CALIFORNIA, MENTAL HEALTH AMERICA, NATIONAL
COUNCIL ON INDEPENDENT LIVING, AND PSYCHIATRIC SERVICE
DOG PARTNERS AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF-
APPELLANT**

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The National Disability Rights Network, American Association of People with Disabilities, the Autistic Self Advocacy Network, Disability Rights California, Mental Health America, National Council on Independent Living, and Psychiatric Service Dog Partners move pursuant to Federal Rule of Appellate Procedure 29(a) for leave to file the accompanying *amici curiae* brief in support of Plaintiff-Appellant C.L. *Amici* endeavored to obtain the consent of all parties to the filing of the brief prior to moving the Court for permission to file. Plaintiff-Appellant C.L. consented to the filing. Counsel for Defendant-Appellee Del Amo Hospital, Inc. has not indicated its consent or opposition.

Amici are nonprofit disability-rights organizations dedicated to advancing and protecting the civil rights of people with disabilities, and *amici* have a direct interest in this matter. *Amici* are recognized authorities in the field of disability rights. A number of the *amici* have appeared before this Court, the Supreme Court, and other federal courts of appeals as *amici curiae* previously. *See, e.g., Kahler v. Kansas*, No. 18-6135 (U.S.) (argued Oct. 7, 2019) (Mental Health America); *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743 (2017) (National Disability Rights Network, Autistic Self Advocacy Network, and Psychiatric Service Dog Partners).

Amici offer a distinctive perspective that will help to inform the Court in its consideration of the legal issues in this case. *Amici* request permission to submit the accompanying brief that elaborates on the importance of the issues and the

implications of the district court’s reasoning for the rights of people with disabilities to use their service animals in places of public accommodation. In turn, *amici* will assist the Court by “supplementing the efforts of counsel” and “drawing the court’s attention” to facts and “law that might otherwise escape consideration.” *Funbus Sys., Inc. v. Cal. Pub. Utils. Comm’n*, 801 F.2d 1120, 1125 (9th Cir. 1986).

For the foregoing reasons, *amici* respectfully request leave of the Court to file the accompanying amicus brief.

February 7, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the word limit of Fed. R. App. P. 27(d)(2)(B) because it contains 318 words. The motion's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

s/ Adam R. Lawton
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CORPORATE DISCLOSURE STATEMENT

None of the *amici curiae* has a parent corporation. No publicly held corporation owns 10% or more of the stock of any of the *amici curiae*.

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INTEREST OF *AMICI CURIAE*¹

The National Disability Rights Network (“NDRN”) is the nonprofit membership association of protection and advocacy (“P&A”) agencies that are located in all 50 states, the District of Columbia, Puerto Rico, and the U.S. territories, and there is a Native American P&A which includes the Hopi, Navajo and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. P&A agencies are authorized under various federal statutes to provide legal representation and related advocacy services, and to investigate abuse and neglect of people with disabilities in various settings. The P&A system is the nation’s largest provider of legally based advocacy services for people with disabilities. NDRN supports its members by providing training and technical assistance, legal support, and legislative advocacy, and works to create a society in which people with disabilities are afforded equality of opportunity and are able to fully participate by exercising choice and self-determination.

The American Association of People with Disabilities (“AAPD”) works to increase the political and economic power of people with disabilities, and to

¹ *Amici curiae* have moved for leave to file this brief. *Amici curiae* notified the parties of their intention to file this brief; Plaintiff-Appellant consented and Defendant-Appellee did not respond with its position. No party’s counsel authored this brief in whole or in part. No party or party’s counsel contributed money that was intended to fund preparing or submitting this brief. No person, aside from *amici curiae*, their members, and their counsel, contributed money intended to fund the preparation or submission of this brief.

advance their rights. A national cross-disability organization, AAPD advocates for full recognition of the rights of over 60 million Americans with disabilities.

The Autistic Self Advocacy Network (“ASAN”) is a national, private, nonprofit organization, run by and for autistic individuals. ASAN provides public education and promotes public policies that benefit autistic individuals and others with developmental or other disabilities. ASAN’s advocacy activities include combating stigma, discrimination, and violence against autistic people and others with disabilities; promoting access to health care and long-term supports in integrated community settings; and educating the public about the access needs of autistic people. ASAN takes a strong interest in cases that affect the rights of autistic individuals and others with disabilities to participate fully in community life and enjoy the same rights as others without disabilities.

Mental Health America (“MHA”), formerly the National Mental Health Association, is a national membership organization composed of individuals with lived experience of mental illnesses and their family members and advocates. The Nation’s oldest and leading community-based nonprofit mental health organization, MHA has more than 200 affiliates dedicated to improving the mental health of all Americans.

The National Council on Independent Living (“NCIL”) is the oldest cross-disability, national grassroots organization run by and for people with disabilities.

NCIL's membership is comprised of centers for independent living, state independent living councils, people with disabilities and other disability rights organizations. NCIL's mission is to advance the independent living philosophy and to advocate for the human rights of, and services for, people with disabilities to further their full integration and participation in society.

Psychiatric Service Dog Partners, Inc. ("PSDP") is a nonprofit corporation promoting the mental health of people using service dogs for psychiatric disabilities by educating, advocating, providing expertise, facilitating peer support, and promoting responsible service dog training and handling. PSDP works for legislative and regulatory change on issues involving service animals. The organization was a leader on an advisory committee established by the Department of Transportation to consider revisions to airline access rules for individuals using service and support animals. The Department of Justice has contractually consulted with PSDP for expertise involving service animals. PSDP educates businesses and the general public about service animals, but the majority of those who receive PSDP's most direct support are disabled individuals who primarily train their own dogs as service animals.

Disability Rights California ("DRC")—formerly known as Protection and Advocacy, Inc.—is a non-profit agency established under federal law to protect, advocate for, and advance the human, legal, and service rights of Californians with

disabilities. DRC works in partnership with people with disabilities, striving towards a society that values all people and supports their rights to dignity, freedom, choice, and quality of life. Since 1978, DRC has provided essential legal services to people with disabilities. In the last year, DRC provided legal assistance on numerous matters to individuals with disabilities, including impact litigation and direct representation. DRC has extensive policy and litigation experience securing the rights of people with disabilities to be accompanied by service animals in medical facilities and other places of public accommodation.

Amici are recognized authorities in the field of disability rights. A number of the *amici* have appeared before this Court, the Supreme Court, and other federal courts of appeals as *amici curiae* previously. *See, e.g., Kahler v. Kansas*, No. 18-6135 (U.S.) (argued Oct. 7, 2019) (MHA as *amicus*); *Fry v. Napoleon Cmty. Sch.*, 137 S. Ct. 743 (2017) (NDRN, ASAN, and PSDP as *amici*); *United States v. Georgia*, 546 U.S. 151 (2006) (NDRN as *amicus*); *Parent/Prof'l Advocacy League v. City of Springfield*, 934 F.3d 13 (1st Cir. 2019) (NDRN, AAPD, and NCIL as *amici*); *Jacobs v. N.C. Admin. Office of the Courts*, 780 F.3d 562 (4th Cir. 2015) (NDRN and MHA as *amici*); *Rawdin v. Am. Bd. of Pediatrics*, 582 F. App'x 114 (3d Cir. 2014) (AAPD, NCIL, and NDRN as *amici*); *Disability Advocates, Inc. v. N.Y. Coal. for Quality Assisted Living, Inc.*, 675 F.3d 149 (2d Cir. 2012) (NDRN, AAPD, ASAN, MHA, and NCIL as *amici*); *Am. Ass'n of People with Disabilities*

v. Harris, 647 F.3d 1093 (11th Cir. 2011) (NDRN as *amicus*); *Antoninetti v. Chipotle Mexican Grill, Inc.*, 614 F.3d 971 (9th Cir.) (NDRN as *amicus*), *amended*, 643 F.3d 1165 (9th Cir. 2010); *United States v. AMC Entm't Inc.*, 549 F.3d 760 (9th Cir. 2008) (NDRN as *amicus*).

The district court's reasoning, if this Court adopts or endorses it, will significantly impede the rights of people with disabilities to use their service animals in places of public accommodation. The district court's ruling improperly imposes heightened requirements on people with disabilities seeking to qualify a service animal under the Americans with Disabilities Act ("ADA"). *Amici* will address how the district court's decision conflicts with applicable regulations and agency guidance. *Amici* will also address how the district court's decision, if left undisturbed, would undermine the ADA's goals by requiring people with disabilities to obtain unnecessary and costly training in order to procure formal certification for their service animals.

SUMMARY OF THE ARGUMENT

This Court should reverse the district court's decision that C.L.'s dog, Aspen, was not a service animal. The Department of Justice ("DOJ") has consistently stated—in regulations, rulemaking commentary, and guidance—that a service animal within the meaning of the Americans with Disabilities Act ("ADA") must be individually trained to perform tasks related to the individual's disability,

but need not be formally certified as a service animal. Indeed, the owner may self-train the animal herself. Because the DOJ is the agency charged with interpreting and enforcing Title III of the ADA, its official pronouncements have the force of law and are entitled to deference. In ruling that C.L. did not meet her burden of proving that Aspen was a service animal because Aspen was not certified as a service dog, the district court's decision was contrary to law.

If allowed to stand, the district court's ruling will have far-reaching consequences. Service animals have a positive impact on the lives of people with psychiatric or other mental disabilities, as well as physical disabilities. For example, service animals can have clinically significant effects on people with psychiatric disabilities such as post-traumatic stress disorder ("PTSD") and anxiety disorders. Certifying a service animal, however, is costly and time-consuming, and therefore not a practical option for a large number of people with disabilities—many of whom depend on the presence of a service animal for their economic and general well-being. Therefore, a decision by this Court requiring people with disabilities to obtain formal certification for their service animals in order to avail themselves of the ADA's protections would deny legally protected access to public accommodations for people who need these animals the most. And such a result would thwart the ADA's stated purpose of eliminating discrimination on the basis of disability in public accommodations.

ARGUMENT

I. The District Court Imposed Heightened Requirements for Qualifying Service Animals that Are Contrary to DOJ Regulations and Guidance.

Congress gave the Attorney General the responsibility to promulgate regulations implementing the provisions of Title III of the ADA. 42 U.S.C. § 12186(b). The DOJ's administrative guidance regarding the public accommodations provisions of Title III is "entitled to deference." *Bragdon v. Abbott*, 524 U.S. 624, 646 (1998) (citing *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984)). That guidance plays a crucial role in implementing and advancing the goals of the ADA.

The DOJ's regulations, in conjunction with the DOJ's contemporaneous rulemaking commentary, make clear that people may self-train their service animals without obtaining a formal certification. Further reinforcing the regulations, the DOJ has issued guidance documents and entered settlement agreements that reflect these same principles. The district court's ruling conflicts with the DOJ's position expressed in these sources.

A. The ADA Directs the DOJ to Develop the Statutory Directives Through Implementing Regulations.

After many years of drafting and debate, the ADA was signed into law on July 26, 1990. Congress was motivated by a desire to eliminate the discrimination facing people with disabilities in essential facets of everyday life, including employment, housing, transportation, and public accommodations. 42 U.S.C.

§ 12101(a)(2)–(3). As the ADA states, “physical or mental disabilities in no way diminish a person’s right to fully participate in all aspects of society.” *Id.*

§ 12101(a)(1). Thus, one of the ADA’s primary goals was “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” *Id.* § 12101(b)(1).

Congress recognized that, to fulfill the ADA’s mandate, the federal government must be actively involved in statutory implementation and enforcement. *See id.* § 12101(b)(3) (explaining that a purpose of the ADA is “to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities”). Most relevant here, the ADA instructs the Attorney General to “issue regulations in an accessible format to carry out the provisions” of Title III governing public accommodations. *Id.* § 12186(b). As this Court has recognized, “[t]o flesh out the details of [Title III’s] general rule, Congress charged the Attorney General with the task of promulgating regulations clarifying how public accommodations must meet these statutory obligations.” *United States v. AMC Entm’t, Inc.*, 549 F.3d 760, 763 (9th Cir. 2008).² This regulatory delegation recognizes that the Attorney General

² *See also Americans with Disabilities Act of 1989: Hearings on S. 933 Before the S. Comm. On Labor & Human Res. & the Subcomm. On the Handicapped*, 101st Cong. 202 (1989) (statement of Hon. Richard L. Thornburgh, Att’y Gen. of the United States) (testifying that “an essential component . . . is the development of a comprehensive set of laws supported by a helpful set of regulations that all work

is uniquely situated to provide guidance on the practical implementation of the parts of the ADA that are relevant here.

Pursuant to that statutory dictate, the DOJ (as delegate of the Attorney General, 28 U.S.C. § 510) issued its first set of regulations in July 1991. Those regulations interpreted undefined terms in the ADA and addressed certain topics not explicitly discussed in the statute. One such topic concerns the necessary accommodations for service animals. In the 1991 regulations, the DOJ defined the term “service animal” as “any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability.” 28 C.F.R. § 36.104 (1991). Other regulations detailed the duty of public accommodations to modify their policies and practices to permit the use of service animals by people with disabilities. *See, e.g., id.* § 36.302(c). In the final rule, the DOJ explained that these regulations “reflect[] the general intent of Congress that public accommodations take the necessary steps to accommodate service animals and to ensure that individuals with disabilities are not separated from their service animals.” *Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities*, 56 Fed. Reg. 35,544,

together to promote the integration of people with disabilities into our communities, schools, and workplaces”).

35,565 (July 26, 1991). This regulatory framework lays the basis for the present set of DOJ regulations governing public accommodations and service animals.

B. DOJ Regulations and Commentary Are Clear that Individuals May Self-Train Service Animals Without Obtaining Formal Certification.

The DOJ's current regulations speak directly to whether a "service animal" within the meaning of 28 C.F.R. § 36.104 may be self-trained by the owner without formal certification. The regulations provide that formal certification is not a requirement, and they do not preclude self-training.

This provision in the regulations came about after the DOJ published a notice of proposed rulemaking in June 2008. *See* Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, 73 Fed. Reg. 34,508, 34,515 (proposed June 17, 2008). With regard to qualifying service animals in particular, the DOJ wished to amend the definition of "service animal" to exclude some species (such as rabbits) and to exclude emotional support animals, but also to formalize the agency's longstanding position that people with psychiatric and mental disabilities can use service animals. *Id.* at 34,515–16, 34,521. After receiving numerous comments from interested members of the public, the DOJ issued its final regulations in September 2010, and they took effect in March 2011. *See* Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities ("Final Rule"), 75 Fed. Reg.

56,236, 56,237 (Sept. 15, 2010); 76 Fed. Reg. 13,286, 13,288 (Mar. 11, 2011) (making technical corrections).

The district court's ruling that Aspen was not a service animal because she was not certified as a service animal, but rather was self-trained by C.L., is contrary to multiple aspects of the 2010 regulations. The regulations make clear that people like C.L. with a "psychiatric . . . or other mental disability" may benefit from the use of service animals. 28 C.F.R. § 36.104.³ A service animal must be "individually trained to do work or perform tasks . . . directly related to the

³ In full, the definition in § 36.104 reads:

Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

individual's disability," such as, in the case of someone with a psychiatric disability, "preventing or interrupting impulsive or destructive behaviors." *Id.* But, as other courts have recognized, the definition includes neither an obligation to obtain formal training nor any limitation on who may conduct the training. *See Bronk v. Ineichen*, 54 F.3d 425, 430 (7th Cir. 1995) (district court erred as a matter of law, warranting a new trial, by providing a jury instruction from which the "jury could logically infer . . . that without school training, a dog cannot be a reasonable accommodation"); *Green v. Hous. Auth. of Clackamas Cty.*, 994 F. Supp. 1253, 1256 (D. Or. 1998) ("There is no requirement as to the amount or type of training a service animal must undergo."). Rather than focus on the formality of a certification, the regulation instead focuses on the outcome of training—namely, the requirement that the animal can perform specific tasks.

The DOJ's commentary accompanying the rulemaking confirms that people need not secure formal training or certification but instead may self-train their service animals. In fact, the DOJ considered but specifically rejected a recommendation submitted by multiple commenters to adopt "formal training requirements for service animals." Final Rule, 75 Fed. Reg. at 56,272. The commentary could not be clearer in its statement that the DOJ "rejected this approach and will not impose any type of formal training requirements or certification process." *Id.* The DOJ justified its decision on multiple bases. First,

“[a] training and certification requirement would increase the expense of acquiring a service animal and might limit access to service animals for individuals with limited financial resources.” *Id.* Second, the suggested training standards were too “lengthy and detailed.” *Id.* In the agency’s view, a definition focusing on whether the service animal is trained to perform specific tasks provided adequate guidance and struck an appropriate balance between competing interests. *Id.*

The DOJ also explained why people may self-train their own service animals. The DOJ expressed an intention not to “unnecessarily impede individual choice” in light of the “the diverse needs and preferences of individuals with disabilities.” *Id.* at 56,266. Therefore, the DOJ declined to impose a rigid training requirement that “would not serve the full array of individuals with disabilities who use service animals.” *Id.* at 56,272. Instead, the DOJ credited that “individuals with disabilities may be capable of training, and some have trained, their service animal to perform tasks or do work to accommodate their disability.” *Id.* Permitting such flexibility in choosing an appropriate training regimen would ultimately allow service animals to continue to “play [their] integral role in the lives of many individuals with disabilities.” *Id.* at 56,266. The district court’s conclusion that C.L.’s failure to complete a training course and failure to receive a certification of Aspen as a service animal weighed against her claim for relief

cannot be reconciled with the permissive approach adopted by the DOJ's rulemaking.

Further underscoring the conflict with the DOJ's interpretation, the district court's decision creates tension with a related regulation. Section 36.302(c) specifies the arrangements that public accommodations must make for service animals. Subsection (c)(6) permits public accommodations to ask two questions to determine whether an animal is a service animal: whether "the animal is required because of a disability," and "what work or task the animal has been trained to perform." 28 C.F.R. § 36.302(c)(6). The public accommodation is expressly prohibited, however, from "requir[ing] documentation, such as proof that the animal has been certified, trained, or licensed as a service animal." *Id.*; *see also* Final Rule, 75 Fed. Reg. at 56,272 ("[A] documentation requirement . . . would be unnecessary, burdensome, and contrary to the spirit, intent, and mandates of the ADA."). The district court's rule creates an inexplicable mismatch between the information that a public accommodation may request and the conditions that a service animal must satisfy.

The district court's decision is an outlier, inconsistent with multiple district court decisions both within and outside this Circuit. In light of the clear language of the regulations and commentary, numerous district courts have declined to accept the stringent requirements imposed by the district court in this case. Many

courts have concluded that there is no obligation to follow a particular “certification process” or employ a “certified trainer.” *Green*, 994 F. Supp. at 1255–56; *see also, e.g., Riley v. Bd. of Comm’rs of Tippecanoe Cty.*, No. 14-CV-00063, 2017 WL 4181143, at *5 (N.D. Ind. Sept. 21, 2017); *Cordoves v. Miami-Dade Cty.*, 92 F. Supp. 3d 1221, 1230 (S.D. Fla. 2015). Likewise, courts have repeated a common refrain that “federal regulations do not set forth any standards or requirements specifying the amount or type of training that an animal must receive to qualify as a service animal.” *E.g., Lerma v. Cal. Exposition & State Fair Police*, No. 12-CV-01363, 2014 WL 28810, at *3 (E.D. Cal. Jan. 2, 2014) (quoting *Miller v. Ladd*, No. 08-CV-05595, 2010 WL 2867808, at *4 (N.D. Cal. July 20, 2010)); *Vaughn v. Rent-A-Ctr., Inc.*, No. 06-CV-01027, 2009 WL 723166, at *10 (S.D. Ohio Mar. 16, 2009); *Access Now, Inc. v. Town of Jasper*, 268 F. Supp. 2d 973, 980 (E.D. Tenn. 2003). And courts have determined that a plaintiff’s testimony need not be corroborated by “documented evidence of training.” *Cordoves*, 92 F. Supp. 3d at 1230; *Vaughn*, 2009 WL 723166, at *10. These holdings are more consistent with the DOJ’s regulations, which authorize people with disabilities to opt for self-training instead of formal training or certification.

C. The DOJ Has Conveyed the Same Views in Its Technical Assistance Manual, Other Guidance Documents, and Settlement Agreements.

Outside of the regulations themselves, the DOJ has consistently expressed its view that service animals need not be certified or formally trained. Importantly, the DOJ has issued multiple technical assistance and guidance documents to that effect. Such materials may properly serve as authoritative sources of interpretative guidance. *See, e.g., Bay Area Addiction Research & Treatment, Inc. v. City of Antioch*, 179 F.3d 725, 732 n.11 (9th Cir. 1999) (DOJ’s ADA Technical Assistance Manual “must also be given substantial deference and will be disregarded only if ‘plainly erroneous or inconsistent with the regulation’” (citation omitted)); *see also Miller v. Cal. Speedway Corp.*, 536 F.3d 1020, 1028 (9th Cir. 2008) (same).

One especially significant source is the DOJ’s Technical Assistance Manual on the Americans with Disabilities Act. *See* U.S. Dep’t of Justice, Technical Assistance Manual on the Americans with Disabilities Act (1994), *available at* <https://www.ada.gov/taman3.html>. Like the regulations themselves, the manual defines service animals by the tasks they are able to perform, not by reference to a particular training protocol. The manual explains that “[s]ervice animals include any animal individually trained to do work or perform tasks for the benefit of an individual with a disability.” *Id.* § III-4.2300. While identifying that “[a] number of States have programs to certify service animals,” the manual instructs that

places of public accommodation “may not insist on proof of State certification before permitting the entry of a service animal to a place of public accommodation.” *Id.*

The DOJ’s technical assistance document titled “Frequently Asked Questions about Service Animals and the ADA” expresses the same sentiment. *See* U.S. Dep’t of Justice, *Frequently Asked Questions about Service Animals and the ADA* (2015), https://www.ada.gov/regs2010/service_animal_qa.pdf. The document seeks to “provide[] guidance on the ADA’s service animal provisions.” *Id.* at 1. It contains two question-and-answer pairings particularly relevant here:

Q5: Does the ADA require service animals to be professionally trained?

A: No. People with disabilities have the right to train the dog themselves and are not required to use a professional service dog training program.

...

Q17: Does the ADA require that service animals be certified as service animals?

A: No. Covered entities may not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal, as a condition for entry.

There are individuals and organizations that sell service animal certification or registration documents online. These documents do not convey any rights under the ADA and the Department of Justice does not recognize them as proof that the dog is a service animal.

Id. at 2, 4. These supplemental DOJ sources underscore what is already explicit in the regulatory materials—namely, that self-training of a service animal is a viable option.

In practice, too, the DOJ has implemented the ideals articulated in these guidance documents. Take, for example, the case of a veteran with post-traumatic stress disorder, anxiety, and depression who was denied a hotel room because of her service dog. After she filed a complaint with the DOJ, the agency entered into a settlement agreement with the hotel owner. *See* Settlement Agreement Between the United States of America and Jon Graves, d/b/a Deerfield Inn and Suites, available at https://www.ada.gov/deerfield_sa.html. As part of the settlement, the hotel management and staff are required to receive training on service-animal accommodations, including the question-and-answer document described above.

Id. ¶ 14. Additionally, the hotel agreed to formally adopt and publicly post a new service-animal policy, which includes a provision that “[a] service dog may be trained either by an organization or by an individual with a disability; it does not need to be certified or licensed as a service animal.” *Id.* ¶¶ 12–13, Attach. A. The DOJ has recently entered into several settlement agreements with materially indistinguishable terms.⁴

⁴ *See, e.g.*, Settlement Agreement Between the United States of America and the Landmark Hotel ¶¶ 13–15, Attach. A., available at https://www.ada.gov/landmark_hotel_sa.html; Settlement Agreement Between the

All of the DOJ's materials point in the same direction, allowing people to undertake training that best suits their specific needs. The district court's contrary ruling, which effectively requires formal training, finds no support in the DOJ's regulations, commentary, or other guidance.

II. This Court's Approval of the District Court's Ruling Would Hinder the Goals of the ADA by Creating Substantial Obstacles for People to Obtain and Train Service Animals.

The district court's decision, if approved by this Court, will have significant negative consequences for people with disabilities who rely on service animals, particularly psychiatric service dogs. Research confirms the life-changing benefits that service dogs can provide to people with psychiatric disabilities. Whereas the DOJ regulations contemplate a versatile approach to training service animals, the district court imposed additional, onerous requirements that would increase the cost of obtaining a service animal while making it more difficult to tailor training

United States of America and the Claremore VFW Post and Auxiliary 2976 ¶¶ 11–13, Attach A., *available at* https://www.ada.gov/claremore_vfw_sa.html; Settlement Agreement Between the United States of America and the Place of Antiques ¶¶ 13–15, Attach A., *available at* https://www.ada.gov/place_of_antiques_sa.html; Settlement Agreement Between the United States of America and the Pawn Shop, Inc. ¶¶ 11–13, *available at* https://www.ada.gov/the_pawn_shop_sa.html; Settlement Agreement Between the United States of America and When Pigs Fly BBQ Pit ¶¶ 12–14, Attach A., *available at* https://www.ada.gov/wpf_bbq_sa.html; Settlement Agreement Between the United States of America and SuperShuttle International, Inc. Under the Americans with Disabilities Act ¶¶ 12, 16–17, Attach A., *available at* <https://www.ada.gov/supershuttle.htm>.

to an individual's specific needs. This Court's approval of the district court's ruling would curtail the ability of people with psychiatric disabilities to realize the full benefits of a service animal.

A. Service Animals Perform Vital Tasks for People with Psychiatric Disabilities.

Service animals have had positive effects on the lives of people with disabilities. Service animals are increasingly being used to assist people who have psychiatric or other mental disabilities rather than physical disabilities. *See Anne Ruff & Adriana Fortune, Emerging Duties Under Unsettled Disability Law: Web Access and Service Animals in Health Care*, 11 J. Health & Life Sci. L. 80, 100 (2017). Research shows the tremendous impact service animals can have in improving the quality of life of people with such disabilities and in contributing to their overall treatment. For example, service dogs have been “associated with clinically significant reductions in [post-traumatic stress disorder] symptoms” compared to usual care alone, Marguerite E. O’Haire and Kerri E. Rodriguez, *Preliminary Efficacy of Service Dogs as a Complementary Treatment for Posttraumatic Stress Disorder in Military Members and Veterans*, 86 J. Consult Clin. Psychol. 179, 184 (2018), and have been shown to help “individuals with autism, post-traumatic stress disorder, and anxiety,” Ruff & Fortune, *supra*, at 100; *see also* Yarborough et al., *An Observational Study of Service Dogs for Veterans With Posttraumatic Stress Disorder*, 68 Psychiatric Services 730, 733 (2017) (“Our

findings provide preliminary evidence that service dogs can be feasible supports for veterans with PTSD . . .”).

Service animals can be trained to perform various tasks related to the unique needs of each person with a disability. For example, “a dog may position itself behind the individual to ‘watch their back’ and alert to approaching strangers,” which can decrease hypervigilance. K.E. Rodriguez et al., *The Effect of a Service Dog on Salivary Cortisol Awakening Response in a Military Population with Posttraumatic Stress Disorder (PTSD)*, 98 *Psychoneuroendocrinology* 202, 202–03 (2018). Dogs can also be trained “to be attentive to an individual’s behavior and provide a redirection of attention during an episode of re-experiencing or distress.” *Id.* at 203.

Research and self-reports of people with psychiatric disabilities emphasize the ability of service animals to help them become more comfortable in public spaces. The Psychiatric Service Dog Society, for example, collected stories from people whose panic disorder with agoraphobia had prevented them from leaving the house but “who are now able to leave their homes accompanied by their [service dog].” Philip Tedeschi et al., *Assistance Animals: Their Evolving Role in Psychiatric Service Applications*, in *Handbook on Animal-Assisted Therapy, Theoretical Foundations and Guidelines for Practice* 421, 427 (Aubrey H. Fine ed., 2010).

One study (the “Crowe study”) found that service animals played a large role in decreasing isolation of veterans with post-traumatic stress disorder (“PTSD”) and facilitating their reintegration into society. Veterans explained to researchers that they found shopping malls and grocery stores could trigger stress, anxiety, and other PTSD symptoms. But because their service dogs “were alerted to the veterans’ anxiety,” the animals would “nudge[] or alert[] (cue[]) the veterans to leave the store” or would offer “individualized alerts to lower the veterans’ anxiety so that they were able to complete their shopping.” Terry K. Crowe et al., *Veterans Transitioning from Isolation to Integration: A Look at Veteran/Service Dog Partnerships*, 40 *Disability & Rehabilitation* 2953, 2956 (2018). Veterans in the study also described how their service dogs alerted them to strangers who approached them and “checked corners” so they were never surprised by strangers approaching. *Id.* at 2956–57.

Service dogs can also assist people with psychiatric disabilities return to work and school. Some veterans in the Crowe study attributed their ability to return to work to their service dogs. *Id.* at 2958. One described returning to school for higher education, which he would not have done without his service dog. He said the service dog made sure he got “a break so that [his] mind can shut down . . . because it is exhausting to have that motor mind that comes with PTSD.” *Id.*

These experiences are in many ways similar to C.L.'s. She likewise testified that she is able to go into public “much, much more” because of Aspen’s training in alerting her to the presence of other people. ER255. She feels comfortable going grocery shopping with the assistance of Aspen, which she was not able to do previously. *Id.* She also explained that she relies on Aspen for other specific tasks, such as waking her from nightmares, interrupting self-injurious behavior (including cutting herself and banging her head against a wall), and going around a corner ahead of C.L. to prevent people surprising her. *See* ER228, ER241, ER254-55. These specialized tasks will vary from individual to individual based on each person’s needs, but all require the constant presence of a service animal.

A ruling that service animals must have a formal certification would have the effect of denying legally protected access to grocery stores, schools, workplaces, and other public places for C.L. and others with psychiatric disabilities who need service animals to mitigate the effects of their disabilities in these places. In this way, the district court’s decision, were it to stand, would likely cause isolation and other harms for these individuals and would dramatically reduce their rights under the ADA.

B. The District Court’s Certified Training Requirement Creates Unwarranted Barriers to Access.

The formalized training and certification required by the district court would result in fewer people able to use their service animals in places of public

accommodation. Such training and certification is not easily available, and it is expensive. One source states that “[t]he estimated costs associated with training a service animal can range anywhere from \$15,000 to \$50,000 per service animal.” Darcie Magnuson, *Service Animals in Training and the Law: An Imperfect System*, 14 *The Scholar: St. Mary’s L. Rev. on Minority Issues* 987, 994 (2012). Those figures are borne out by the facts of this case. C.L. testified that she sought to purchase a professionally trained service dog but could not find a price lower than \$15,000. ER218. Similarly, Katie Gonzalez, an expert service dog trainer, testified that her organization fully trains service dogs at a cost of \$38,000, and people wait up to ten years for these dogs. ER472. Like many people with psychiatric disabilities who would benefit from a service dog, C.L. had not been able to work prior to obtaining Aspen and therefore could not come “close” to paying such high fees. ER218–19. Obtaining professionally trained service dogs is therefore not a realistic choice for many people with psychiatric disabilities.

Nor is enrolling in a training course to obtain a certification always a viable option. The district court placed great weight on the fact that Ms. Gonzalez would not certify Aspen as a service dog under standards set by Assistance Dogs International, a private trade association. ER14. But Ms. Gonzalez explained that she could not certify Aspen under this standard unless C.L. attended three seminars and provided proof of disability from a medical provider. ER494. These burdens

are in addition to the \$900 tuition, plus any travel or other expenses that may be required to attend multiple-day sessions. ER495.

Rigid training programs also are not ideal when the needs of each individual and the particulars of each training vary greatly. In fact, this was the very reason that the DOJ declined to adopt such formalisms: “Because of the variety of individual training that a service animal can receive—from formal licensing at an academy to individual training on how to respond to the onset of medical conditions, such as seizures—the Department is not inclined to establish a standard that all service animals must meet.” *Nondiscrimination on the Basis of Disability*, 73 Fed. Reg. at 34,524. As C.L. testified, she did not attend all three sessions of Ms. Gonzalez’s seminar because they were focused on tasks that she did not require Aspen to perform. ER252.

Further, there is no industry-wide consensus on the proper certification standards. The DOJ acknowledges that there are multiple individuals and organizations that “sell service animal certification or registration documents online,” but the DOJ “does not recognize [these documents] as proof that the dog is a service animal.” U.S. Dep’t of Justice, *Frequently Asked Questions about Service Animals and the ADA*, *supra*, at 4. As a clear example of the lack of agreement on certification standards, Ms. Gonzalez testified that her organization starts with the general certification framework of another organization, but adds

additional standards. ER553. It is unclear how a person who uses a service dog could reliably choose between these various standards, none of which the DOJ endorses, to ensure the “certification” will be judicially recognized.

C. Individualized Training Should Be Preserved as an Important and Effective Means of Teaching Psychiatric Service Animals.

In addition to the cost and difficulty of access, acquiring a service dog who has already been trained may be less effective for people with psychiatric disabilities. Industry group Psychiatric Service Dog Society advocated for individuals to train their own service dogs because it improves the individual’s communication with the dog and creates a “strong bond which sets the stage for keener alerting abilities.” Tedeschi et al., *supra*, at 432. The previous President of the group noted that only the individual herself can train a dog to cue to changes in her physiology, which is a key task for many service dogs. *Id.* Self-training is therefore not only preferable, but also necessary for many service animal tasks.

This is also apparent from C.L.’s testimony about how she trained Aspen to perform certain tasks. C.L. testified that she trained Aspen to intervene when she engaged in self-injurious cutting and head-banging. ER241–42. The only reason she realized that Aspen could prevent this behavior was that Aspen came over to her when she started engaging in it. C.L. then reinforced Aspen’s action of coming over to her and intervening whenever she was cutting herself. ER242. In other

words, C.L. was able to shape Aspen's response by encouraging Aspen to react in a specific way when presented with an actual scenario.

By the same token, a separation of the individual from her service animal can also be harmful. Ms. Gonzalez testified that any dissociation between the individual and her service animal, however brief, can interrupt the bond between the two, making further training difficult. ER530–31. In addition, she had witnessed instances in which people separated from their service dogs sometimes suffered “extreme” anxiety and physical harm as a result. ER538. Indeed, C.L. testified that she found it very difficult to be without Aspen during her stays at the hospital. Showering without Aspen standing watch was particularly difficult, so C.L. “went much longer without showering” than normal and even had a “meltdown” in the shower. ER304. When she reunited with Aspen, C.L. had to work to re-establish the relationship and reinforce Aspen's training. ER408. The individualized nature of the training required for psychiatric service dogs makes this type of separation all the more traumatic for both animal and person, further underscoring the grave issues with the district court's decision.

CONCLUSION

For these reasons, the decision of the district court should be reversed.

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Respectfully submitted,

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FOR THE NINTH CIRCUIT**

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