

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

FAUSTINO XAVIER BETANCOURT-
COLÓN, *et al.*,

Plaintiffs,

v.

CITY OF SAN JUAN, a public entity also
known as the Municipality of San Juan

Defendant.

Case No. 19-cv-1837-JAG-GLS

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

CITY OF SAN JUAN, a public entity also
known as the Municipality of San Juan

Defendant.

COMPLAINT IN INTERVENTION OF THE UNITED STATES

The United States of America respectfully alleges:

1. The United States brings this suit against the City of San Juan, Puerto Rico (“City” or “San Juan”) to enforce Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12131-34, as amended, and its implementing regulation, 28 C.F.R. pt. 35, and Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794, and its implementing regulations for recipients of federal funding from the United States Department of Transportation (“USDOT”), 49 C.F.R. pt. 27. San Juan has violated Title II and Section 504 by failing to provide people with disabilities, including individuals with mobility impairments, an equal opportunity to access and benefit from the City’s public sidewalk system.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under Title II of the ADA, 42 U.S.C. § 12133, Section 504, 29 U.S.C. § 794, and 28 U.S.C. §§ 1331 and 1345.

3. The Court may grant the relief sought in this action pursuant to 42 U.S.C. § 12133, 29 U.S.C. § 794a, and 28 U.S.C. §§ 2201-2202.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391, because it is where Defendant resides and where the acts or omissions giving rise to this action occurred.

PARTIES

5. Plaintiff-intervenor is the United States of America. The United States, through the United States Department of Justice (“Department”), is authorized to enforce the ADA and Section 504. 42 U.S.C. § 12133; 29 U.S.C. § 794a; 49 C.F.R. § 27.125.

6. Defendant City of San Juan is the largest municipality in the Commonwealth of Puerto Rico; it is also Puerto Rico’s capital and home to the Commonwealth’s executive, legislative, and judiciary branches of government. San Juan is a “public entity” within the meaning of 42 U.S.C. § 12131(1) and 28 C.F.R. § 35.104 and is therefore subject to Title II of the ADA and its implementing regulation. Additionally, San Juan receives Federal financial assistance, including from USDOT, and is therefore subject to Section 504. 29 U.S.C. § 794(a). According to 2020 estimates by the U.S. Census Bureau, there are more than 37,000 residents of San Juan with ambulatory disabilities.

FACTS

A. Statutory & Regulatory Background

7. Congress enacted the ADA in 1990 to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. 42 U.S.C.

§ 12101(b)(1). In enacting the ADA, Congress found that “discrimination against individuals with disabilities persists in such critical areas as . . . transportation, . . . recreation, . . . and access to public services[.]” and that the forms of discrimination encountered by individuals with disabilities include “the discriminatory effects of architectural [and] transportation . . . barriers,” “failure to make modifications to existing facilities and practices,” and “relegation to lesser services, programs, activities, benefits, jobs, or other opportunities[.]” *Id.* § 12101(a)(3), (5).

8. Title II of the ADA requires that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132; *see also* 28 C.F.R. § 35.130(a).

9. San Juan’s provision and maintenance of a public sidewalk system, including sidewalks, curb ramps, crosswalks, and other pedestrian rights-of-way, is a covered “service, program, or activity” under Title II of the ADA. *See* 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a); *see also* Order on Nov. 12, 2022, ECF No. 24.

10. People who have mobility impairments that substantially limit a major life activity, such as walking, who use and seek to use San Juan’s public sidewalk system are qualified individuals with disabilities under the ADA. *See* 42 U.S.C. § 12131(2); 28 C.F.R. §§ 35.104, .108; *see also* Order Den. Mot. to Dis. 8, ECF No. 17.

11. In the context of physical accessibility, Title II requires that no qualified individual with a disability shall “be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity” because the entity’s facilities are “inaccessible to or unusable by individuals with disabilities.” 28 C.F.R. § 35.149. Facilities include “roads” and “walks” controlled by a public entity. 28 C.F.R. § 35.104.

12. For existing facilities, a public entity must “operate each service, program, or activity so that . . . when viewed in its entirety, [it] is readily accessible to and usable by individuals with disabilities.” 28 C.F.R. § 35.150(a).

13. Newly constructed or altered facilities must be “readily accessible to and usable by individuals with disabilities.” 28 C.F.R. § 35.151(a)(1), (b)(1). Such facilities must comply with either the Uniform Federal Accessibility Standards, or the 1991 or 2010 ADA Standards for Accessible Design (depending on the date of construction or alteration). 28 C.F.R. § 35.151(c).

14. A public entity must also maintain its facilities in a manner that ensures they are readily accessible to and usable by people with disabilities. 28 C.F.R. § 35.133.

15. Section 504 prohibits discrimination on the basis of disability in programs or activities that receive Federal financial assistance. 29 U.S.C. § 794(a); *see also* 49 C.F.R. § 27.7.

B. The Allegations of the Current Plaintiffs

16. This lawsuit was initially filed on September 6, 2019 by four plaintiffs with mobility disabilities (“the Betancourt Plaintiffs”) who use wheelchairs or scooters and who live in or frequently visit San Juan. The Betancourt Plaintiffs filed an Amended Complaint on December 5, 2019. ECF No. 11.

17. The Betancourt Plaintiffs allege that San Juan has violated Section 504 and Title II of the ADA by failing to install and maintain curb ramps necessary to ensure its public sidewalk system is accessible to individuals with mobility disabilities. Pls.’ Am. Compl. ¶ 1.

18. The inaccessibility of sidewalks in San Juan has severely limited their ability to safely travel about the city and to engage in various aspects of city life. *Id.* ¶¶ 6, 30.

19. The barriers the Betancourt Plaintiffs encounter make it difficult and in some cases impossible to access various City facilities and public accommodations. *Id.* ¶¶ 36-38, 40-

45, 48-49, 52-55, 59-60.

20. To navigate around these barriers they often must risk injury to themselves or damage to their mobility devices by traveling in the street or over unsafe surfaces. *Id.*

C. FHWA Investigation and Noncompliance Findings

21. In April 2017, the Department received a complaint alleging accessibility issues with pedestrian rights-of-way in the El Vedado neighborhood of San Juan. The Department referred the complaint to the USDOT Federal Highway Administration (FHWA) for investigation.

22. In March 2019, FHWA issued a Letter of Findings (LOF) to San Juan, detailing numerous violations of the ADA and Section 504 that it had found in its investigation. These included noncompliant or missing curb ramps; physical barriers such as utility poles that obstructed pedestrian rights-of-way; and vehicles parked on sidewalks in front of homes and businesses completely blocking the path of travel. *See* 28 C.F.R. §§ 35.133(a), .149–150.

23. FHWA's LOF also noted that San Juan had violated various ADA programmatic requirements, including appointing an ADA coordinator, providing a public notice of its ADA obligations, and adopting an ADA grievance procedure. *See* 28 C.F.R. §§ 35.105–.107. The LOF demanded that San Juan submit an action plan within 90 days setting forth the steps it would take to address FHWA's noncompliance findings.

24. For nearly three years, FHWA engaged in conciliation efforts with San Juan aimed at getting the City to voluntarily adopt the remedial measures demanded in the LOF.

25. FHWA repeatedly warned the City that its failure to adopt the proposed measures could result in FHWA referring its noncompliance findings to the Department for appropriate enforcement action.

26. FHWA was unable to secure San Juan's voluntary compliance.

27. In March 2022, FHWA referred its noncompliance findings to the Department for appropriate enforcement action. 28 C.F.R. § 174; 49 C.F.R. § 27.125.

D. Additional Investigation by the Department of Justice

28. After receiving the FHWA's referral, the Department conducted an additional survey of San Juan's public sidewalk system to further evaluate the City's compliance with Title II of the ADA and Section 504.

29. The Department's survey included ten different areas of the City and focused on high traffic sites to which people with disabilities and others regularly need or want access such as transit centers, schools, medical facilities, libraries, post offices, courthouses, shopping districts, and tourist attractions.

30. The Department's survey found widespread accessibility issues with San Juan's public sidewalk system, including curb ramps that are cracked, too steep, or nonexistent, and sidewalks that are uneven, too narrow, or obstructed by bollards, utility poles, or other obstacles.

31. The Department's survey included curb ramps that appeared to have been recently installed or repaired. Many of these newly installed or altered curb ramps are not compliant with the 2010 ADA Standards for Accessible Design.

32. The prevalence and severity of accessibility barriers in many of the sites the Department surveyed make it extremely difficult if not impossible for a wheelchair user to safely navigate the City's public sidewalk system.

33. The inaccessibility of San Juan's public sidewalk system has harmed and continues to harm individuals with mobility impairments who live in or visit San Juan. By failing to provide a public sidewalk system that is readily accessible to and useable by people

with mobility impairments, San Juan denies these individuals an equal opportunity to safely and efficiently move about the City and to engage in important parts of city life; this includes accessing government offices and facilities, schools, places of employment, shops and businesses, healthcare services, public transportation, and parks and tourist attractions.

FIRST CAUSE OF ACTION
Violation of Title II of the Americans with Disabilities Act
(42 U.S.C. §§ 12131-12134)

34. The foregoing paragraphs are incorporated herein.

35. All conditions precedent to the filing of this Complaint have occurred or been performed. *See* 28 C.F.R. pt. 35, subpt. F; 49 C.F.R. pt. 27, subpt. C.

36. San Juan's public sidewalk system, viewed in its entirety, is not readily accessible to and usable by individuals with disabilities. 28 C.F.R. § 35.150.

37. San Juan has failed to ensure that elements of its public sidewalk system that were constructed or altered after January 26, 1992 are readily accessible to and usable by individuals with disabilities, in compliance with the applicable accessibility standards. 28 C.F.R. § 35.151.

38. San Juan has also failed to maintain the accessibility of its public sidewalk system by, for example, failing to enforce parking policies that prevent vehicles from blocking pedestrian rights-of-way. 28 C.F.R. § 35.133.

39. San Juan's failure to provide and maintain an accessible public sidewalk system denies qualified individuals with mobility impairments an equal opportunity to access and benefit from that system. 42 U.S.C. § 12132; 28 C.F.R. §§ 35.130, 35.149.

40. As a result, San Juan has violated Title II of the ADA, 42 U.S.C. §§ 12131-34, and its implementing regulation, 28 C.F.R. pt. 35.

SECOND CAUSE OF ACTION
Violation of Section 504 of the Rehabilitation Act of 1973
(29 U.S.C. § 794)

41. The foregoing paragraphs are incorporated herein.

42. All conditions precedent to the filing of this Complaint have occurred or been performed. *See* 49 C.F.R. pt. 27, subpt. C.

43. San Juan receives Federal financial assistance, including from USDOT, that is used to fund the City's provision and maintenance of its public sidewalk system.

44. San Juan's failure to provide and maintain an accessible public sidewalk system denies qualified individuals with mobility impairments an equal opportunity to access and benefit from that system because of their disabilities. 29 U.S.C. § 794(a); 49 C.F.R. § 27.7.

45. As a result, San Juan has violated Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and its implementing regulation pertaining to recipients of federal funding from USDOT, 49 C.F.R. pt. 27.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff United States prays that the Court:

A. Grant judgment in favor of the United States and declare that the City of San Juan has violated Title II of the ADA, 42 U.S.C. §§ 12131-34, and its implementing regulation, 28 C.F.R. pt. 35, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 49 C.F.R. pt. 27, by denying individuals with disabilities an equal opportunity to access and benefit from the City's public sidewalk system.

B. Order San Juan to make its public sidewalk system readily accessible to and useable by individuals with disabilities.

C. Order San Juan to take all other necessary steps to comply with the ADA and Section 504.

D. Award such other appropriate relief as justice may require.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2022, I electronically filed the foregoing with the Clerk of Court using the ECF system, which sent notification of such filing to all counsel of record.

/s/ Adam F. Lewis
ADAM F. LEWIS