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## United States of America v. Bolivar County

Judge Debra M. Brown

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## United States of America v. Bolivar County

### Keywords

United States of America, Bolivar County, 4:15-cv-165-DMB-JMV, Government, Consent Decree, Termination, Disparate Impact, Disability, Diabetes, Employment Law, ADA, ADA AAA, Americans with Disabilities Act

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

BOLIVAR COUNTY,

Defendant.

[Press Release](#)

**CONSENT DECREE**

**I. Background**

1. This Consent Decree resolves a civil action brought by Plaintiff United States against Defendant, Bolivar County, to enforce the provisions of Title I of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12111-12117, and its implementing regulation, 29 C.F.R. Part 1630.
2. In its Complaint, the United States alleges that Bolivar County discriminated against Tommey Gomillia in violation of 42 U.S.C. § 12112 and 29 C.F.R. §§ 1630.2, 1630.4,

1630.10, and 1630.14 by terminating Mr. Gomillia from his job as a correctional officer at Bolivar County Regional Correctional Facility (“BCRCF”) on the basis of a perceived disability, after Mr. Gomillia disclosed during a post-hire physical examination that he was previously diabetic.

3. This matter was initiated by a charge filed by Mr. Gomillia (Charge No. 846-2012-00919) with the Equal Employment Opportunity Commission (“EEOC”). The EEOC investigated the charge and found reasonable cause to believe that the allegations of discrimination on the basis of disability were true. After the EEOC’s attempts at conciliation failed, the EEOC referred the charge to the United States Department of Justice (“the Department”).
4. Bolivar County has denied, defended, and disputed the allegations and claims contained in EEOC Charge No. 846-2012-00919 and this action.
5. The United States and Bolivar County (collectively “the parties”) agree that it is in the parties’ best interests, and the United States believes that it is in the public interest, to resolve this lawsuit on mutually agreeable terms without further litigation. Accordingly, the parties agree to the entry of this Consent Decree without trial or further adjudication of any issues of fact or law raised in the United States’ Complaint.

Accordingly, the parties hereby **AGREE** and the Court expressly **APPROVES, ENTERS,** and **ORDERS** the following:

## **II. Jurisdiction and Venue**

6. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 2000e-5(f), 42 U.S.C. § 2000e-6, and 28 U.S.C. §§ 1331 and 1345. The parties agree that venue is appropriate pursuant to 28 U.S.C. § 1391.
7. The United States has authority to initiate legal proceedings to enforce Title I of the ADA through litigation. 42 U.S.C. § 12117(a).
8. Bolivar County is a person within the meaning of 42 U.S.C. § 12111(7) and 42 U.S.C. § 2000e(a), an employer within the meaning of 42 U.S.C. § 12111(5), and a covered entity within the meaning of 42 U.S.C. § 12111(2) and 29 C.F.R. § 1630.2.

### **III. Injunctive Relief**

9. Bolivar County, by and through its officials, agents, employees, and all persons in active concert or participation with Bolivar County in the performance of employment or personnel functions, shall not engage in any act or practice that discriminates against any employee or applicant for employment on the basis of disability in violation of Title I of the ADA.
10. Bolivar County shall provide training on Title I of the ADA, including Bolivar County's responsibilities with respect to employee accommodations, to all current BCRCF supervisory employees, as well as BCRCF employees who participate in making personnel decisions (collectively, "supervisors"), within forty-five (45) days of the entry of this Consent Decree; and to all new BCRCF supervisors, who are hired or promoted to a supervisory position during the term of this Consent Decree, within seven (7) days of the start of their position with BCRCF. The initial training shall be conducted in person by trainers that Bolivar County has selected and the Department has approved. The initial training may be

videotaped for use at subsequent trainings. After Bolivar County has completed the training for current BCRCF supervisors, as required by this paragraph, Bolivar County shall provide a written report to the Department regarding its compliance with the training requirement, including copies of attendance logs reflecting the date(s) of the training(s) and names and job titles of BCRCF employees who attended the training(s).

11. Six (6) months after the effective date of this Consent Decree, and every six (6) months thereafter during the term of this Consent Decree, Bolivar County shall provide a written report (“Report”) to the United States regarding its efforts to comply with this Consent Decree. The Report shall include, for the preceding six-month period:

- a. A specific acknowledgment that Bolivar County has, for the instant reporting period, complied with the training requirements set forth in paragraph 10 above.
- b. Notification regarding any request for reasonable accommodation made by any BCRCF employee, and a description of how Bolivar County responded to the request. Such notice will include, at a minimum, a description of the nature of the request, the name of the individual making the request, and all documentation possessed by Bolivar County relevant to its response to the request.
- c. Notification regarding any lawsuit, written complaint, charge, or grievance alleging that Bolivar County has violated Title I of the ADA. Such notice will include, at a minimum, a description of the nature of the allegation, the name of the individual making the allegation, and all documentation in the possession, custody, or control of Bolivar County relevant to the allegation. The first Report filed with the United States under this Consent Decree shall include all ADA Title I lawsuits, and all written

complaints, charges, or grievances of which Bolivar County is aware and that are pending or otherwise unresolved at the time the first Report is made. All subsequent reports shall include notice of all ADA Title I lawsuits, written complaints, charges, or grievances made subsequent to the immediately previous Report, as well as those ADA Title I lawsuits, written complaints, charges, or grievances reported in previous Reports that remain pending.

#### **IV. Individual Relief**

12. Bolivar County shall offer to Mr. Gomillia:

- a. Within one (1) year of the effective date of this Consent Decree, the first available position of Correctional Officer at BCRCF, with a remedial seniority date of September 6, 2011, subject to passing all physical and/or other applicable pre-employment requirements. Bolivar County shall apply the remedial seniority date of September 6, 2011 to salary increases (such that Mr. Gomillia will be instated at the salary he would have been entitled to had he been employed since the remedial seniority date), all non-competitive job benefits that are based on time served in the position, and competitive seniority status for all purposes.
- b. Adjustment of Mr. Gomillia's retirement date, with all associated rights and benefits, to reflect no lost time between September 2011 and the date of his reinstatement under paragraph 12(a).
- c. Within thirty (30) days of the effective date of this Consent Decree, a total monetary award of \$99,999.99, which includes:

- i. A monetary award in the gross amount of \$47,072.00, which will be designated as back pay. This monetary amount shall be subject to any applicable federal, state, and local taxes, in addition to other payroll tax withholding deductions, and Bolivar County shall issue an IRS Form W-2 to Mr. Gomillia for this amount.
- ii. A monetary award of \$3,363.95, which will be designated as accumulated interest on the back pay. This amount shall not be subject to withholding deductions, and Bolivar County shall issue an IRS Form 1099-INT to Mr. Gomillia for this amount.
- iii. A monetary award of \$49,564.04, which will be designated as compensatory damages. This amount shall not be subject to withholding deductions, and Bolivar County shall issue an IRS Form 1099 to Mr. Gomillia for this amount.

13. Within thirty (30) days of the effective date of this Consent Decree, Bolivar County shall send to Mr. Gomillia a copy of this signed Consent Decree, along with a letter and Release of Claims Form (attached as Exhibits 1 and 2 respectively). In order to accept the relief offered by Bolivar County, Mr. Gomillia must execute and return the Release of Claims Form (Exhibit 2) to Bolivar County within thirty (30) days of his receipt of Bolivar County's letter (Exhibit 1).

14. Bolivar County shall send the United States a copy of Exhibits 1 and 2 when they are sent to Mr. Gomillia.



15. If Mr. Gomillia accepts Bolivar County's relief offer outlined in paragraph 12 above, Bolivar County shall pay the monetary sum within fifteen (15) days of receipt of his signed Release of Claims Form.

## **V. Implementation and Enforcement**

16. Failure by the United States to enforce any provision of this Consent Decree shall not be construed as a waiver of the United States' right to enforce any provisions of this Decree.

17. If any term of this Consent Decree is determined by any court to be unenforceable, the other terms of this Consent Decree shall nonetheless remain in full force and effect.

18. The United States may review compliance with this Consent Decree at any time. If the United States believes that this Consent Decree or any portion of it has been violated, it will raise its concerns with Bolivar County and the parties will attempt to resolve those concerns in good faith. The United States will give Bolivar County thirty (30) days from the date it notifies Bolivar County of any breach of this Consent Decree to cure that breach before filing a motion for contempt or taking any other enforcement action.

19. With regard to any of the deadlines specified in this Consent Decree, if a party cannot meet the deadline specified, that party shall notify the other party at least ten (10) business days before the deadline, of the party's inability to meet the deadline and the reason(s) why, and shall request an extension of time to a specific date. The other party shall not unreasonably withhold consent to a request for an extension of time made in good faith.

20. This Consent Decree shall be binding upon Bolivar County, its agents, and employees.

21. A signatory to this document in a representative capacity for Bolivar County represents that he is authorized to bind Bolivar County to this Consent Decree.
22. This Consent Decree constitutes the entire agreement between the United States and Bolivar County on the matters raised herein and no other statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written Consent Decree, including its attachments, shall be enforceable.
23. This Consent Decree is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Consent Decree.
24. This Consent Decree does not affect Bolivar County's continuing responsibility to comply with all aspects of the ADA.
25. A copy of this Consent Decree or any information contained herein may be made available to any person, and Bolivar County shall provide a copy of this Consent Decree to any person upon request.
26. The parties agree that as of the date of entry of this Consent Decree, litigation is not "reasonably foreseeable" concerning the matters described in paragraphs 1-3. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described in paragraphs 1-3, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Consent Decree.
27. The effective date of this Consent Decree is the date the Court enters the Decree.

28. The duration of this Consent Decree will be three (3) years from the effective date.

## VI. Jurisdiction of the Court

29. The Court shall retain jurisdiction over this Decree for the purpose of resolving any disputes or entering any orders that may be necessary to implement the relief provided in the Decree.

IT is so **ORDERED**, this   17th   day of   March  , 2016

  /s/ Debra M. Brown  

UNITED STATES DISTRICT JUDGE

AGREED AND CONSENTED TO:

  /s/ James McBride  

James McBride, President

Bolivar County Board of Supervisors

  November 16, 2015  

Date

  /s/ Ellis Turnage  

Ellis Turnage,

Legal Counsel for Bolivar County

November 16, 2015

Date

Vanita Gupta

Principal Deputy

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Eve L. Hill

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Disability Rights Section

Civil Rights Division

U.S. Department of Justice

950 Pennsylvania Avenue, N.W.

Washington, D.C. 20530

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November 17, 2015

Date

Felicia C. Adams

United States Attorney

Northern District of Mississippi

/s/ Ralph M. Dean

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November 17, 2015

Date

## Exhibit 1

### BY OVERNIGHT MAIL

[Name]

[Address]

Re: Gomillia v. Bolivar County

Civil Action No. [ ]

EEOC Charge # 846-2012-00919

Dear Mr. Gomillia:

The United States Department of Justice and Bolivar County have entered into a Consent Decree to resolve the charge you filed in this matter. A copy of the Consent Decree is enclosed.

Under the Consent Decree, Bolivar County is offering you a payment of \$ \_\_\_\_\_; reinstatement to the first available position of Correctional Officer at Bolivar County Regional Correctional Facility with a remedial seniority date of September 6, 2011, subject to passing all physical and/or other applicable pre-employment requirements; and adjustment of your retirement date, with all associated rights and benefits, to reflect no lost time from 2011-2015. In order to accept Bolivar County's offer, you must sign and notarize the enclosed Release of Claims Form and return it to Bolivar County within thirty (30) days of your receipt of this letter. You may return the forms by mail to:

Name

Title

Address

City, State Zip Code

Telephone Number

The remedial relief is offered to you on the following condition: if you accept it, you will be required to release Bolivar County from all claims you may have against it, arising out of EEOC Charge # 846-2012-00919 and Civil Action No. [ ] filed in the Federal District Court for the Northern District of Mississippi. Within fifteen (15) days of Bolivar County's receipt of your executed Release of Claims Form, Bolivar County will forward you a check in the amount of \$ [ ].

If you have any questions concerning this letter or the Consent Decree, you may contact me at \_\_\_\_\_ or you may contact Dov Lutzker at the Department of Justice at (202) 514-5746.

Sincerely,

XXXXXXXXXX

Enclosure: Copy of Executed Consent Decree

Release of Claims Form

cc: Dov Lutzker, U.S. Department of Justice

**Exhibit 2**

**RELEASE OF CLAIMS FORM**

Gomillia v. Bolivar County

Civil Action No. [ ]

EEOC Charge # 846-2012-00919

For and in consideration of the remedial relief made by Bolivar County, under the provisions of the Consent Decree entered into by, and between, the United States and Bolivar County, I, \_\_\_\_\_, hereby release and forever discharge Bolivar County, and its current, past, and future officials, employees, agents, successors, assigns, and administrators, of and from any legal and equitable claims, actions, causes of action, suits, controversies, damages, and demands whatsoever that I had, now have, or hereafter may have arising out of Civil Action No. [ ] filed in the United States District Court for the Northern District of Mississippi and EEOC Charge No. 846-2012-00919.

This Release constitutes the entire agreement between me and Bolivar County without exception or exclusion. This Release will be considered null and void in the event that Bolivar County fails to offer the relief provided for in Paragraph \_\_\_ of the Consent Decree.

I have read this Release and understand the contents thereof and I execute this Release of my own free act and deed. I also acknowledge that a copy of the Consent Decree has been made available to me.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_

[NAME]



Sworn and subscribed to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_