IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

The Estate of Ryan LeRoux, *et al.*, **Plaintiffs,** **v.** **Montgomery County, MD, *et al.*,** **Defendants.**	**CIVIL NO. 8:22-cv-00856-AAQ**

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

The United States respectfully submits this Statement of Interest under 28 U.S.C. § 517[1] to address the application of Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134, to emergency (911) dispatch services and law-enforcement interactions. Congress charged the Department of Justice with implementing Title II of the ADA by promulgating regulations, issuing technical assistance, and bringing suits in federal court to enforce the statute. 42 U.S.C. §§ 12133-12134, 12206. Of particular relevance to this case, the Department implements Title II as to "[a]ll programs, services, and regulatory activities relating to law enforcement." 28 C.F.R. § 35.190(b)(6). The United States therefore has a strong interest in the proper interpretation of Title II and its corresponding regulations in this context.

[1] The Attorney General is authorized "to attend to the interests of the United States" in any case pending in federal court. 28 U.S.C. § 517.

BACKGROUND

A. Legal Background

Under Title II of the ADA, "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 an such entity." 42 U.S.C. § 12132. The Fourth Circuit has held that Title II applies to police activities and investigations. *See Seremeth v. Bd. of Cnty. Comm'rs Frederick Cnty.*, 673 F.3d 333, 337-339 (4th Cir. 2012). As a part of its obligations under Title II's implementing regulations, officers and other employees of law enforcement agencies, such as 911 dispatchers, "must make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability. . . ." *Id*. at 339 (quoting 28 C.F.R. § 35.130(b)(7)).

B. Factual Background

Plaintiffs in this case are the parents of Ryan LeRoux, a young Black man with mental health disabilities who was killed in July 2021 when Montgomery County Police Department (MCPD) officers fired 23 bullets at him in the parking lot of a McDonald's.[2] They allege that on the night of Ryan's death, MCPD's Emergency Communications Center received a 911 call for assistance from a McDonald's employee. ECF 25 (First Amended Complaint) ¶ 60. The

[2] The following facts are drawn from plaintiffs' first amended complaint. ECF 25. At the motion to dismiss stage, a court "accept[s] as true the well-pled allegations of the complaint and construe[s] the facts and reasonable inferences derived therefrom in the light most favorable to the plaintiff." *Harbourt v. PPE Casino Resorts Maryland, LLC*, 820 F.3d 655, 658 (4th Cir. 2016).

employee explained that Ryan was "acting crazy" by not paying for his food or moving from the drive-through. *Id.* ¶¶ 3, 60-61. After confirming with the employee that Ryan was not acting in a threatening or dangerous manner, an MCPD dispatcher directed an armed officer to respond to the McDonald's. *Id.* ¶¶ 61-63. The dispatcher did not request MCPD's own Crisis Intervention Team (CIT), *id.* ¶ 62, which consists of one clinician and two officers who have received basic mental health training, *id.* ¶¶ 48, 50. Nor did the dispatcher call the County's Mobile Crisis Team—mental health professionals from the local health department who are authorized to co-respond with MCPD to provide crisis evaluation and stabilization services. *Id.*

It is further alleged that an officer arrived over an hour later, and discovered Ryan reclined in the driver seat of his car, wearing headphones, and holding his cell phone in one hand. *Id.* ¶¶ 64-65. The officer observed a gun on the front passenger seat, prompting him to call for back up. *Id.* ¶ 66. The officer yelled various conflicting commands at Ryan, instructing him both to raise his hands and to unlock the passenger door. *Id.* ¶¶ 68-69. Ryan did not respond. *Id.* ¶ 69. Over the next thirty-four minutes, seventeen additional officers arrived and evacuated the McDonalds, surrounded Ryan with their vehicles and "stop sticks," drew their weapons, and shouted at Ryan through megaphones. *Id.* ¶¶ 70-72.

Plaintiffs allege that Ryan remained in a reclined position for the majority of the encounter. After running Ryan's license plate, officers obtained his cell phone number and attempted to speak to him on the phone; they also had the 911 dispatcher speak with Ryan on the phone. *Id.* ¶¶ 76-79. According to the amended complaint, neither of the individuals who spoke with Ryan were members of the health department's Mobile Crisis Team or MCPD's Crisis Intervention Team. *Id.* ¶ 19. Eventually, twenty-one minutes after the initial officer's arrival, a senior officer on the scene requested a crisis negotiator over radio and the dispatcher responded

that one was en route. *Id.* ¶ 77. While the officers waited for the negotiator, they discussed plans to obtain the gun by breaking the front passenger window. *Id.* ¶ 80. Officers then observed Ryan sit up in his seat. *Id.* ¶ 81. Citing to body worn camera footage, the complaint alleges that one officer yelled that Ryan was "eyeing the gun" and that "within seconds of [him] sitting up," four out of the seventeen officers present fired twenty three shots into Ryan's car, killing him. *Id.* ¶¶ 81-85.

DISCUSSION

In its motion to dismiss the amended complaint, Montgomery County (hereafter "Montgomery County" or "the County") asserts that plaintiffs have failed to state a claim under Title II because they have not pled adequate facts showing that Ryan was a "qualified individual with a disability" nor have they identified what reasonable modifications Ryan was entitled to receive. The County also argues that MCPD lacked knowledge of Ryan's disability and required accommodations,[3] at the 911 dispatch stage and during the encounter in the parking lot. The County further denies liability by asserting that it both provided Ryan with reasonable modifications, and that it was "absolved" of any additional duty to accommodate because of exigent circumstances. The Department provides this brief to clarify the proper construction of Title II and its implementing regulations at the pleading stage.[4]

[3] The County uses "reasonable accommodations" interchangeably with "reasonable modifications." *See* ECF 33-1 at 23 n.17.

[4] The Department files this statement of interest in support of plaintiffs' opposition to the motion to dismiss the amended complaint. ECF 38. Aside from the issues discussed herein, the United States takes no position on other issues before the court.

I. The amended complaint alleges sufficient facts to establish that Ryan LeRoux had a disability within the meaning of the ADA.

The ADA protects individuals who have a disability within the meaning of the statute. 42 U.S.C. § 12132. The ADA defines disability as "a physical or mental impairment that substantially limits one or more major life activities," 42 U.S.C. § 12102(1)(A). The ADA's disability definition must be read "broadly in favor of expansive coverage keeping in mind that the language is not meant to be a demanding standard." *J.D. by Doherty v. Colonial Williamsburg Found.*, 925 F.3d 663, 670 (4th Cir. 2019) (internal citations, quotations, and brackets omitted). This approach is "consistent with the purpose of the ADA Amendments Act of 2008 . . . which was passed to reinstate a broad scope of protection to be available under the ADA." *Id.* Montgomery County argues that notwithstanding Ryan's various mental health diagnoses, plaintiffs' amended complaint fails to establish that Ryan was an "individual with a disability" because the complaint does not assert how his impairments substantially limited a major life activity specifically on the night of his death. ECF 33-1 (Motion to Dismiss) at 10-12. This argument is unavailing.

Plaintiffs do allege how Ryan's impairments substantially limited a major life activity at the time of the alleged discrimination. First, the plaintiffs' amended complaint alleges a long history of mental health diagnoses including ADHD, depression, and schizophrenia, requiring multiple psychiatric inpatient treatments and anti-psychotic medication over the course of Ryan's life. ECF 25 ¶¶ 37-41; 111; *see also* 28 C.F.R. § 35.108(d)(2)(iii) (it should easily be concluded that schizophrenia will, at minimum, substantially limit the major life activity of brain function). According to the complaint, these documented conditions triggered a variety of "bizarre behaviors," *id.* ¶ 40, substantially limiting Ryan's brain function and ability to communicate and

interact with others—quintessential major life activities. *See id.* ¶ 39-40 (describing psychotic behavior and thinking, and paranoia and distrustfulness at treatment center a year prior to incident); *id.* ¶ 45 (describing "non-responsive" behavior when threatened with arrest for refusing to leave a hotel room four days before incident).

The complaint further describes how, on the night in question, Ryan was in a catatonic "abnormal mental state," barely reacting while officers yelled at him through megaphones and surrounded him at gunpoint—behavior that demonstrates a substantial limitation in communicating and interacting with others. *See id.* ¶¶ 69-73; *see* 28 C.F.R. § 35.108(c)(1)(i) ("Major life activities include, but are not limited to . . . communicating [and] interacting with others . . . ."). The factual assertions in the amended complaint, read expansively as the ADA Amendments Act intended, establish that Ryan was a person with a disability within the meaning of the statute and implementing regulations. The County neither acknowledges the Fourth Circuit's endorsement of this expansive coverage, the text of the ADA Amendments Act, nor Title II's implementing regulations on the definition of disability, which caution: "[t]he primary object of attention . . . should be whether public entities have complied with their obligations and whether discrimination has occurred . . . the threshold issue of whether an impairment substantially limits a major life activity should not demand extensive analysis." 28 C.F.R. § 35.108(d)(1)(ii). Instead, the County relies on some cases decided before the passage of the ADA Amendments Act, which apply a more exacting standard that is no longer in effect, to support its argument that Ryan is not a person with a disability.[5]

[5] *See, e.g.*, *Davidson v. Midelfort Clinic, Ltd.*, 133 F.3d 499, 505-09 (7th Cir. 1998) ("[N]ot every impairment that affects a major life activity will be considered disabling; only if the resulting limitation is significant will it meet the ADA's test."). *But see* 28 C.F.R. §

II. Whether the County had knowledge of Ryan's need for modification is a fact issue that should not be resolved at the motion to dismiss stage.

A public entity is required to make reasonable modifications under Title II when the entity has knowledge of a person's disability-related limitations, including when the limitations are obvious or apparent. *Seremeth*, 673 F.3d at 336 (accommodations required for known limitations); *Robertson v. Las Animas Cnty. Sheriff's Dep't*, 500 F.3d 1185, 1197 (10th Cir. 2007) (modifications required when the need is obvious); *Greer v. Richardson Indep. Sch. Dist.*, 472 F. App'x 287, 296 (5th Cir. 2012) (a request for accommodations is needed when limitations are *not* obvious or apparent). The easiest way for a plaintiff to establish that the defendant has such knowledge is by showing that they, or a third party, explicitly asked for a modification. *See, e.g.*, *Estate of Robert Ethan Saylor v. Regal Cinemas, Inc.*, No. WMN-13-3089, 2016 WL 4721254 at *16 (D. Md. Sept. 9, 2016) (full-time aide requested that officers allow person with a disability to sit quietly in the movie theater until his mother arrived). But a direct request is not the only way to establish knowledge. As the County itself recognizes, a person with a disability can also establish knowledge by showing their need for a reasonable modification was obvious or apparent to the public entity. ECF 33-1 at 18. "When a disabled individual's need for an accommodation is obvious, the individual's failure to expressly request one is not fatal to the ADA claim." *Robertson v. Las Animas Cnty. Sheriff's Dep't*, 500 F.3d 1185, 1197 (10th Cir. 2007) (internal citations and quotations omitted); *see also Jarboe v. Maryland Dep't of Pub.*

35.108(d)(1)(v.) ("An impairment does not need to prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting."); *see also Price v. Nat'l Bd. of Medical Examiners*, 966 F. Supp. 419, 427-28 (S.D.W.Va 1997) (analysis of learning disability), *but see* 28 C.F.R. § 35.108(d)(3)(iii) (discussing learning disability analysis).

Safety & Corr. Servs., No. ELH-12-572, 2013 WL 1010357, at *19 (D. Md. Mar. 13, 2013) (noting that "sometimes a person's need for an accommodation will be obvious, and in those circumstances an explicit request for an accommodation is not required in order to establish the obligation to provide reasonable accommodations.") (internal citations, brackets, and quotations omitted).

Thus, to survive a motion to dismiss, a plaintiff is not required to prove that a public entity knew the exact details of the plaintiff's condition; rather the plaintiff must plausibly allege that their need for a modification should have been apparent to the defendant through signs such as the plaintiff's behavior or other indicia. For example, in *Smith v. City of Greensboro*, eight police officers observed plaintiff pace back and forth, run around in circles, and bang his head against the window of a squad card. No. 1:19CV386, 2020 WL 1452114, at *1 (M.D.N.C. Mar. 25, 2020). Based on this behavior, the district court held that it was "at least plausible that the Officers recognized Smith as mentally disabled, even if the precise nature of his disability was uncertain." *Id.* at 13. However, the plaintiffs' claim failed because the court found that the complaint did not allege specific "special" modifications that would have been obvious to the officers, "aside from the usual, lawful treatment afforded to any agitated, intoxicated, or distressed person requiring medical attention." *Id.* Here, by contrast, plaintiffs allege that there were specific reasonable modifications available that the County should have provided.[6]

[6] A number of law enforcement agencies across the county have taken affirmative steps to "anticipate and prepare for the disability-related needs of people with mental health disabilities and/or [intellectual and developmental disabilities]." *U.S. Dep't of Justice, Examples and Resources to Support Criminal Justice Entities in Compliance with Title II of the Americans with Disabilities Act (Jan. 2017), https://www.ada.gov/cjta.html.* Such steps include training employees on "when to dispatch crisis intervention teams [or] when to consider dispatching a mental health provider rather than a police officer," or "[h]ow to use de-escalation or other

Whether the need for such modifications was apparent or obvious under the circumstances of this case is a factual question that should not be resolved at the motion to dismiss stage.

Courts have also made clear that Title II does not allow public entities to claim ignorance in the face of apparent signs of a person's disability and need for a modification by simply declining to inquire further. As the District of Columbia has explained, "[n]othing in the disability discrimination statutes even remotely suggests that covered entities have the option of being passive in their approach to disabled individuals as far as the provision of accommodations is concerned." *Pierce v. District of Columbia*, 128 F. Supp. 3d 250, 269 (D.D.C. 2015) (granting summary judgment to an incarcerated deaf person for a jail's failure to provide him with an American Sign Language interpreter to access medical services and other programming despite factual disputes about whether plaintiff explicitly requested an interpreter). To the contrary, "Title II mandate[s] that entities act *affirmatively* to evaluate the programs and services they offer and to ensure that people with disabilities will have meaningful access to those services." *Id.* (emphasis in original); *see also Randolph v. Rodgers*, 170 F.3d 850, 858–59 (8th Cir. 1999) ("While it is true that public entities are not required to guess at what accommodations they should provide, the requirement does not narrow the ADA . . . so much that the [defendant] may claim [plaintiff] failed to request an accommodation when it declined to discuss the issue with him.").

---

alternative techniques to increase safety and avoid using force unnecessarily." *Id.* The obligation to provide reasonable modifications to people who may not be able to communicate their needs while experiencing a disability-related crisis "applies when an agency employee knows or reasonably should know that the person has a disability and needs a modification, even where the individual has not requested a modification, such as during a crisis, when a disability may interfere with a person's ability to articulate a request." *Id.*

Here, plaintiffs assert that Ryan's behavior was sufficiently out of the ordinary such that it put officers and call operators on notice that he required a modified approach for some kind of mental health disability. At the time they called 911, the McDonald's employees characterized Ryan as "acting crazy." ECF 25 ¶¶ 3, 61. Ryan then barely reacted to being surrounded by armed officers who were shouting commands at him, ECF 25 ¶¶ 68-72. The complaint additionally refers to statements made by two officers on the scene, captured on body worn camera footage, who observed that Ryan was "not aggressive at all" and suggested that this was a "suicide by cop kind of thing," *id.* ¶74 and that Ryan was "gonna end up offing himself." *Id.* ¶73. Plaintiffs also allege that had officers done the "bare minimum of further investigation" beyond running Ryan's license plate to obtain his cell phone number, they would have discovered the mental health incident that took place just days prior where MCPD encountered Ryan in a hotel in a similar catatonic state. *Id.* ¶ 76. *See Sachetti v. Galludet University*, 344 F. Supp. 3d 233, 272 (declining to grant summary judgment for defendants in Title II suit due to lack of evidence showing that police department "satisfied its obligation to investigate what, if any, accommodations [plaintiff] required"). Plaintiffs further allege that MCPD's decision to call a crisis negotiator indicates an awareness "that they were dealing with a fragile mental health situation." ECF 25 at ¶ 77.

In its efforts to disclaim knowledge that Ryan required reasonable modifications, the County primarily relies on two unpublished district court decisions involving police encounters with people with mental health disabilities. But neither of these cases is analogous. In *Smith*, as discussed above, plaintiffs identified specific reasonable modifications such as de-escalation strategies for the first time in their response to the defendant's motion to dismiss and not in the underlying complaint. 2020 WL 1452114 at *13. The court found that the complaint—unlike the

complaint here—did not plead facts to show how officers, who had called an ambulance to the scene, would be plausibly aware that additional modifications were needed. *Id.* In *Thompson v. Badgujar*, the district court concluded that plaintiffs' complaint did not "support a reasonable inference that [defendants] should have perceived [the decedent] had a disability necessitating an accommodation," relying in part on the limited observations police could make during a less-than five-minute encounter where the decedent began "charging" towards a single officer.[7] No. 20-cv-1272-PWG, 2021 WL 3472130 at *11, 3 (D. Md Aug. 6, 2021). These facts are in stark contrast with the more prolonged interaction that allegedly took place here. Instead of having to respond to a verbal or physical confrontation in a compressed time frame, for thirty-four minutes multiple officers had the opportunity to observe Ryan in a passive, non-responsive state, even as armed officers shouted commands at him.

In the final analysis, defendants may have a different interpretation of the facts alleged in the amended complaint, including what inferences can be drawn from statements made by officers captured on video footage (footage that both parties rely upon and reference) or the state of mind of the captain who called the crisis negotiator. ECF 33-1 at 19-20. At the pleading stage, however, inferences must be drawn in plaintiffs' favor and factual disputes should not be resolved on a motion to dismiss. *See Harbourt*, 820 F.3d at 658.

[7] The court in *Thompson* also relied on body worn camera footage that "flatly contradict[ed] the facts pleaded in the complaint." 2021 WL 3472130 at *3. Here, the County largely does not dispute plaintiffs' characterization of what took place in the parking lot, and each party cites to MCPD's body worn camera footage.

III. The reasonableness of plaintiff's proposed modification in this case is a fact-intensive inquiry that cannot be decided on a motion to dismiss.

A. The standards for pleading a reasonable modification are not burdensome.

In the Fourth Circuit, "[w]hat constitutes reasonable accommodations during a police investigation . . . is a question of fact and will vary according to the circumstances." *Seremeth*, 673 F.3d at 340. At the pleading stage, a plaintiff has the initial burden to identify reasonable modifications they were entitled to receive. But "plaintiffs' prima facie burden . . . is not a heavy one." *Henrietta D. v. Bloomberg*, 331 F.3d 261, 280 (2d Cir. 2003) (internal quotations and citations omitted). "A modification is reasonable if it is reasonable on its face or used ordinarily or in the run of cases and will not cause undue hardship." *Nat'l Fed'n of the Blind v. Lamone*, 813 F.3d 494, 507 (4th Cir. 2016) (hereinafter *NFB I*) (internal quotations omitted) (citing *Halpern v. Wake Forest Univ. Health Scis.*, 669 F.3d 454, 464 (2012)). Defendants misconstrue this burden and assert that the modifications alleged in the amended complaint are not specific enough. ECF 33-1 at 25.

But plaintiffs identify several reasonable modifications that the County could have employed upon receiving the 911 call, including "dispatching someone trained in handling a person in mental health crisis, such as the Mobile Crisis Team or the Crisis Intervention Team," ECF 25 ¶ 119, and later in the parking lot, "deescalating the situation by using Crisis Intervention Techniques, calling for mobile crisis services or waiting for the crisis negotiator who had already been requested," *Id.* ¶ 133. All of these proposed modifications—which plaintiffs allege were available through existing services and programs in the county—are sufficient at the pleading stage to "suggest the existence of" more than one "plausible accommodation." *Henrietta D.*, 331 F.3d at 280; *see also Vos v. City of Newport Beach*, 892

F.3d 1024, 1037 (9th Cir. 2018) (reversing summary judgment where officers shot a man who was running around a convenience store and ignored two commands to drop the scissors because the officers "had the time and the opportunity to assess the situation and potentially employ . . . accommodations . . . including de-escalation, communication, or specialized help."); *Nat'l Fed'n of the Blind, Inc. v. Lamone*, 438 F. Supp. 3d 510, 529 (D. Md. 2020) (declining to grant motion to dismiss where proposed modifications sought to "enact a significant change" and came at a "significant cost" but were still plausible at pleading stage "where all inferences must be drawn in Plaintiffs' favor."). The reasonableness of plaintiffs' proposed modifications in this case depends on facts that cannot be resolved at the motion-to-dismiss stage on the current record. *See NFB I*, 813 F.3d at 508; *Manson v. Maryland State Bd. of Physicians*, No. 1:20-CV-03345-SAG, 2021 WL 2352285, at *4 (D. Md. June 9, 2021).

B. There is no exigency exception to Title II's reasonable modification obligation in the Fourth Circuit.

The County incorrectly states that exigent circumstances can "absolve" public entities of their duty to provide reasonable modifications by exempting certain law enforcement activities from the scope of ADA protections. ECF 33-1 at 30 (citing *Waller v. City of Danville*, 556 F.3d 171, 174-75 (4th Cir. 2009) and *Hainze v. Richards*, 207 F.3d 795 (5th Cir. 2000)). But that argument not only mischaracterizes the holding in *Waller*,[8] it ignores controlling Fourth Circuit precedent: in *Seremeth*, the Fourth Circuit made clear there is no exigent circumstances exception to Title II. 673 F.3d at 339. *Seremeth* involved a 911 call from a mother who told the

[8] The Fourth Circuit in *Waller* used the language "absolve" only in referring to the lower court's holding and the Fifth Circuit's decision in *Hainze*. 556 F.3d at 175. The court declined to answer the "broader proposition" of "[w]hether or when an exigent circumstances constraint upon the ADA exists," holding instead that "exigency is one circumstance that bears materially on the inquiry into reasonableness under the ADA." *Id.*

police that she saw her child's father (the plaintiff), who was deaf, hit their child. *Id.* at 335. Responding to this domestic violence call, sheriffs arrived at the father's home and immediately handcuffed him, preventing him from communicating through writing, while they waited for an ASL interpreter. *Id*. The Fourth Circuit ultimately concluded that these modifications were reasonable in light of the exigency presented by a domestic violence situation. The court held, "the consideration of exigent circumstances is included in the determination of the reasonableness of the accommodation. . . . [T]his view of the ADA has the ancillary benefit of encouraging the provision of accommodations during exigent circumstances." 673 F.3d at 339.

The County argues that MCPD had no obligation to provide reasonable modifications to Ryan because "throughout the encounter, the threat of extreme violence and exigency existed." ECF 33-1 at 32. This argument misses the mark on two fronts. First, whether exigency existed "throughout the encounter" is contested, and all inferences must be construed in plaintiffs' favor at this stage of the proceedings. Second, even if exigent circumstances existed, they should be considered to assess the reasonableness of a modification (which also is highly fact-intensive and thus inappropriate for resolution at the motion to dismiss stage) and not to determine whether the ADA applies to the encounter—which, under Fourth Circuit precedent, it does. Moreover, the County's acknowledgement that it eventually did call a crisis negotiator,[9] who was en route at the time of the shooting, is evidence of at least one reasonable modification that was available.

[9] Plaintiffs' complaint distinguishes a crisis negotiator from two other proposed modifications: a mobile crisis team and a crisis intervention team. *See* ECF 25 ¶¶ 119, 133.

This undercuts the County's assertions that exigent circumstances prevented the County from undertaking *any* reasonable modifications to its policies, practices, and procedures. *Id.* at 25.[10]

The parties draw opposing inferences about the import of the approximately ninety minutes that passed between the initial 911 call and the moment[11] when officers alleged that Ryan was "eyeing" the gun in the passenger seat of the car, and what constituted a reasonable modification during that time period. Plaintiffs assert that the lack of any reports of violence and threats from third parties and Ryan's nonresponsive and passive behavior despite being yelled at through megaphones and surrounded by armed officers, supports that MCPD should have provided Ryan reasonable modifications earlier in the timeline. *See, e.g.*, ECF 25 ¶ 64-72. The County argues that during this same time frame, they provided all the modifications that were reasonable. At this stage, plaintiffs have plead plausible modifications beyond what the County

[10] By the same token, to the extent that the County argues that Ryan was a direct threat to the officers on the scene, *see* 28 CFR § 35.139, such a determination is an affirmative defense and not properly addressed at the pleading stage. *Wood v. Md. Dep't of Transportation*, 732 Fed. Appx. 177, 181 (4th Cir. 2018) (recognizing "direct threat" regulation as an affirmative defense allowed under Title II)); *Coster v. Maryland*, No. CV GLR-21-65, 2021 WL 5605027, at *14 (D. Md. Nov. 30, 2021) (denying motion to dismiss based on direct threat because "District courts [ ] do not resolve affirmative defenses on a motion to dismiss unless all facts necessary to the defense "clearly appear[ ] on the face of the complaint.") (internal citation omitted)). Here, the plaintiffs have alleged sufficient facts, disputed by the County, such that it would be improper for the court to rule on this issue at this stage of the proceedings. *See Goodman v. Praxair, Inc.*, 494 F.3d 458, 464-66 (4th Cir. 2007) (reversing district court's dismissal of the complaint based on an affirmative defense because "[A] motion to dismiss filed under Federal Rule of Procedure 12(b)(6), which tests the sufficiency of the complaint, generally cannot reach the merits of an affirmative defense.")).

[11] In a footnote, defendants cite to Fourth Amendment case law for the proposition that in assessing reasonableness, courts should focus on "the moment force was used; conduct prior to that moment is not relevant in determining whether an office used reasonable force." ECF 33-1 at 33 n.22 (quoting *Elliot v. Leavitt*, 99 F.3d 640, 643 (4th Cir. 1996)). But plaintiffs' amended complaint does not assert an excessive force claim under the Fourth Amendment, and the County offers no case law or independent reasoning to explain why Title II's reasonableness inquiry should be analyzed under the same framework as excessive force claims.

claims it provided. The reasonableness of these proposed modifications in light of the exigent circumstances present is a question to be resolved on a more developed factual record. *See NFB I*, 813 F.3d at 508. ("Determination of the reasonableness of a proposed modification is generally fact-specific.") (internal citations omitted); *Manson*, 2021 WL 2352285 at *4 ("The question of whether an accommodation request is reasonable is generally a question of fact that the Fourth Circuit has determined is ill-suited for disposition at summary judgment, let alone the motion to dismiss.") (citing *Seremeth*, 673 F.3d at 340).

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court consider this Statement of Interest in this litigation.

Date: October 7, 2022

For the United States of America:

/s/ Kristen Clarke
KRISTEN CLARKE
Assistant Attorney General
Civil Rights Division

ANNE RAISH
Acting Chief

AMANDA MAISELS
Deputy Chief

/s/ Kimberly Scheckner
/s/ Nabanita Pal

Kimberly Scheckner
Nabanita Pal
Trial Attorneys

Disability Rights Section
Civil Rights Division
U.S. Department of Justice
150 M Street, N.E.
Washington, D.C. 20002
Telephone: 202-532-5360
Email:
kimberly.scheckner@usdoj.gov

Erek L. Barron,
United States Attorney

/s/
Sarah A. Marquardt (Bar No. 17294)
Assistant United States Attorney
36 South Charles Street, 4th Floor
Baltimore, Maryland 21201
Tel: 410-209-4800
Fax: 410-962-2310
sarah.marquardt@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of October 2022, a correct copy of the foregoing Statement of Interest of the United States of America was filed via CM/ECF and was thereby served upon all counsel of record.

/s/
Sarah A. Marquardt
Assistant United States Attorney