All Eyes On Me:

The Plaintiff's Architecture for Announced-Surveillance Exclusion from Public Space

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Abstract

Announced mass surveillance of the public right of way, automated license plate reader networks above all, operates as an access barrier for a definable class of people with psychiatric disabilities: those for whom observation is the clinical content of the condition, avoidance of public space is its behavioral consequence, and treatment runs through returning to feared situations so the world can disconfirm the feared outcome. A companion article establishes that mechanism and its claim under the meaningful access standard. This article builds the litigation. It maps the settled ground, the right of way as a covered program, and the first hazard, the split over privately enforceable regulations. It frames the claim through meaningful access, the methods of administration and reasonable modification rules, and the integration mandate, and it answers the benefit-definition countermove. It then constructs the plaintiff: deterrence standing on the model the accessibility cases built, the concreteness demanded after *TransUnion*, accrual on *Frame*'s knew-or-should-have-known trigger, associational and organizational standing that let the class litigate without exposing individual members, and a Rule 23(b)(2) class whose common question is a single announced policy. It maps remedies through the deliberate indifference gate and the post-*Cummings* damages architecture, in which economic loss must carry what emotional injury cannot, states the defenses and their discipline, and closes with comparative anchors: the Convention on the Rights of Persons with Disabilities, the anticipatory adjustments duty of the UK Equality Act, a surveillance deployment held unlawful under an equality statute, and Canada's constitutional accommodation principle.

Keywords: disability rights; disability law; ADA Title II; meaningful access; reasonable modification; methods of administration; integration mandate; automated license plate readers; camera barrier; persecutory delusions; deliberate indifference; comparative disability law.

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I. Introduction

The staircase was never defended on the ground that it treats all comers alike, because the defense loses on sight: the stairs do not cost every user the same thing, and the users they cost the most are the ones they exclude.[1] The argument of this article's companion is that the same structure now stands in the public right of way in a second material: announced automated license plate reader networks and allied camera systems, uniform on their face, unequal in what they extract, and, for a definable class of people with psychiatric disabilities, destructive of the one clinical channel that makes public space usable at all.[2] That article makes the conceptual and doctrinal case that the extension follows from the accessibility canon without new law. This one accepts the extension as premise and asks the practitioner's questions: who sues, on what theory, against which defenses, for what relief.[3]

The questions are worth a separate article because the answers are less obvious than the claim. The claim's core rides on authority as settled as Title II authority gets: the right of way is a program, the measure is meaningful access, and the modification machinery reaches policy artifacts.[4] The plaintiff's architecture is where the novelty concentrates. The injury here is exclusion experienced from outside the covered zone, by people whose disability makes the zone unusable, which raises in sequence the imminence problem of *Lyons*, the concreteness demand of *TransUnion*, and the exposure problem that class members face if litigation requires them to

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1. See 42 U.S.C. § 12101(a)(5) (finding that individuals with disabilities continually encounter "the discriminatory effects of architectural, transportation, and communication barriers"); Tennessee v. Lane, 541 U.S. 509 (2004) (sustaining Title II's enforcement of access to the institutions of public life in a case arising from courthouse stairs).

2. The class and the mechanism are established in the companion and restated in Part III below. The deployment record is documented at Chad Marlow & Jay Stanley, *How to Fight Deployment of Flock and Other Mass Surveillance License Plate Readers in Your Community*, ACLU (June 29, 2026), `https://www.aclu.org/news/privacy-technology/tracking-alpr-cameras/how-to-fight-deployment-of-flock-and-other-mass-surveillance-license-plate-readers-in-your-community` (last visited Aug. 28, 2026) [hereinafter Marlow & Stanley].

3. The division of labor tracks the companion's own statement of limits, which reserved standing mechanics, class definition, immunity postures, and split risks for doctrinal treatment.

4. See infra Parts II, IV.

identify themselves as members of a stigmatized diagnostic population.[5] Each problem has an answer already built by the accessibility cases, the deterrence standing line above all, and Part V assembles them.[6]

The article proceeds in seven moves. Part II maps the settled ground and the one genuine hazard on it, the split over which implementing regulations private plaintiffs may enforce. Part III restates the barrier and the class in the compressed form litigation requires, with the clinical corpus carried in the margin. Part IV frames the claim: meaningful access as the standard, methods of administration and reasonable modification as the vehicles, the integration mandate as the segregation frame, and disparate impact's viability after *Sandoval* as the contested outer lane.[7] Part V builds the plaintiff. Part VI maps remedies through the intent gate and the post-*Cummings* damages architecture.[8] Part VII states the defenses and their limits, and Part VIII sets the comparative anchors that show the same problem being solved under other instruments.

II. The Settled Ground and the First Hazard

A. The Right of Way Is a Program

Title II provides 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.[9] The Supreme Court reads the phrase without carving exceptions: state prisons fall within it because the text says what it says.[10] *Tennessee v. Lane* supplies the constitutional floor and the governing image, a wheelchair

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5. City of Los Angeles v. Lyons, 461 U.S. 95 (1983); TransUnion LLC v. Ramirez, 594 U.S. 413 (2021); *see infra* Part V.D (associational and organizational standing as the exposure solution).

6. See Pickern v. Holiday Quality Foods Inc., 293 F.3d 1133 (9th Cir. 2002); Chapman v. Pier 1 Imports (U.S.) Inc., 631 F.3d 939 (9th Cir. 2011) (en banc); Kreisler v. Second Ave. Diner Corp., 731 F.3d 184 (2d Cir. 2013); Tandy v. City of Wichita, 380 F.3d 1277 (10th Cir. 2004).

7. Alexander v. Sandoval, 532 U.S. 275 (2001); Payan v. L.A. Cmty. Coll. Dist., 11 F.4th 729 (9th Cir. 2021) [hereinafter *Payan I*].

8. Cummings v. Premier Rehab Keller, P.L.L.C., 596 U.S. 212 (2022).

9. 42 U.S.C. § 12132. The private remedy incorporates the remedies of the Rehabilitation Act. *Id.* § 12133; 29 U.S.C. § 794a.

10. Pennsylvania Dep't of Corrs. v. Yeskey, 524 U.S. 206 (1998).

user who crawled up two flights of courthouse stairs to answer charges in a building that was formally open to him.[11]

The circuits have applied that text to the street itself. The Ninth Circuit holds that public sidewalks are a service, program, or activity, reasoning that the statute reaches anything a public entity does and that maintaining the right of way is a normal function of a city.[12] The Fifth Circuit, en banc, holds that Title II and Section 504 unambiguously extend to newly built and altered sidewalks, in a private suit the court allowed to proceed, and grounds the holding in what sidewalks are for: safe transportation and a venerable public forum.[13] The Third Circuit holds that resurfacing a street is an alteration that triggers the curb ramp obligation.[14] The Sixth Circuit holds the new construction and alterations regulation privately enforceable because it effectuates the statute's own mandate.[15] District courts have rejected the trio of avoidance defenses, that sidewalks are no program, that adjacent owners bear the duty, and that repair is an undue burden, and the court of appeals has held that a compliant sidewalk rendered unusable through the city's own event oversight violates the statute notwithstanding a longer alternate route.[16] The survey literature confirms the doctrinal settlement while documenting its chronic underenforcement.[17]

B. The First Hazard: Which Regulations Are Privately Enforceable

The one genuine hazard on this ground is regulatory. The circuits divide over which implementing regulations a private plaintiff may enforce. The Tenth Circuit enforces both

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11. Lane, 541 U.S. 509 (sustaining Title II, as applied to cases implicating the right of access to the courts, as valid enforcement legislation).

12. Barden v. City of Sacramento, 292 F.3d 1073 (9th Cir. 2002) (holding the program accessibility regulations, 28 C.F.R. §§ 35.149 to 35.151, applicable to the sidewalk network).

13. Frame v. City of Arlington, 657 F.3d 215 (5th Cir. 2011) (en banc).

14. Kinney v. Yerusalim, 9 F.3d 1067 (3d Cir. 1993) (resurfacing from intersection to intersection is an alteration triggering the curb ramp obligation).

15. Ability Ctr. of Greater Toledo v. City of Sandusky, 385 F.3d 901 (6th Cir. 2004).

16. Culvahouse v. City of LaPorte, 679 F. Supp. 2d 931 (N.D. Ind. 2009); Cohen v. City of Culver City, 754 F.3d 690 (9th Cir. 2014).

17. B.A. Whaley et al., *The Americans with Disabilities Act and Equal Access to Public Spaces*, 13 Laws 5 (2024) (surveying the enforcement record for the Burton Blatt Institute's arm of the Inclusive Public Space Project) [hereinafter Whaley et al.].

the self-evaluation and transition plan regulations; the First, Sixth, and Ninth Circuits hold the transition plan regulation unenforceable in a private action because it imposes obligations beyond what the statute itself requires, and the Sixth, in the same opinion, enforces the new construction regulation because it effectuates the statutory mandate directly.[18] The sorting principle the cases share is whether the regulation effectuates the statute's own prohibition or imposes a freestanding procedural obligation.[19]

The camera claim should be built to pass through this gate untouched, and it can be. The claim pleaded in Part IV rides on the statute's own discrimination prohibition, given content by the meaningful access standard, and on the methods of administration and reasonable modification regulations, both of which the courts treat as articulations of what the statute itself forbids rather than as procedural add-ons.[20] The hazard, in other words, is real and avoidable, and avoiding it is a pleading decision made on day one.

III. The Barrier and the Class, Stated for Litigation

A. The Barrier

Four properties of the surveillance layer do the legal work, and each is a design feature. The networks are dense and pooled: the largest vendor describes more than 20 billion vehicle scans per month across more than 5,000 communities and a corporate objective of every city in the country, and the covered zone is stitched from public and private segments a pedestrian cannot

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18. Chaffin v. Kan. State Fair Bd., 348 F.3d 850 (10th Cir. 2003) (holding both regulations privately enforceable); Iverson v. City of Boston, 452 F.3d 94 (1st Cir. 2006) (self-evaluation and transition plan regulations not privately enforceable, framing the division against *Chaffin*); Lonberg v. City of Riverside, 571 F.3d 846 (9th Cir. 2009) (transition plan regulation, 28 C.F.R. § 35.150(d), creates no privately enforceable right); *Ability Ctr.*, 385 F.3d 901 (finding that 28 C.F.R. § 35.151 "effectuates a mandate of Title II and is therefore enforceable through the private cause of action available under the statute," while holding the transition plan regulation not privately enforceable).

19. See *Ability Ctr.*, 385 F.3d 901; *Lonberg*, 571 F.3d 846; *cf.* Sandoval, 532 U.S. 275. *Lonberg* states the sorting rule in one sentence: "Only those regulations effectuating the statute's clear prohibitions or requirements are enforceable through the statute's private right of action." *Lonberg*, 571 F.3d 846.

20. See 42 U.S.C. § 12132; Alexander v. Choate, 469 U.S. 287 (1985); 28 C.F.R. § 35.130(b)(3)(i), (b)(7)(i). The closure: nothing in the claim requires enforcing § 35.150(d)'s transition plan machinery, so the *Iverson* and *Lonberg* line never engages. A complaint that demands a surveillance transition plan by analogy would walk into the split for nothing.

distinguish.[21] They are announced by design, because deterrence requires visibility: eye-line pole placement, public vendor boasts, and a device population residents have located and mapped by sight, roughly 80,000 nationally by February 2026 and roughly 119,000 by midsummer, a bracket across sources and months rather than a settled count.[22] The observer is organizational and retentive: networked, searchable, alerting, interagency, with records that describe where a vehicle has been over time.[23] And the apparatus is uniform on its face: every vehicle photographed, every resident addressed, no one turned away at the edge of the zone.[24]

B. The Class

The class is defined by mechanism, in the functional style the ADA itself uses to define disability.[25] Three features mark membership. Observation, scrutiny, or ambient threat is the clinical content of the condition; avoidance of public and shared space is its characteristic behavioral consequence; and the evidence-based treatments route through a single channel, returning to feared situations so the world can disconfirm the feared outcome.[26]

Four populations satisfy the definition. The paranoia spectrum anchors it: suspicious thoughts are hierarchically arranged in the general population, ascending from interpersonal worry through ideas of reference toward persecutory thinking, with beliefs about severe harm pursued by organizations and conspiracies at the apex; at the severe end, persecutory delusions

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21. Marlow & Stanley, *supra* note 2.

22. Zack Whittaker, *Americans Are Destroying Flock Surveillance Cameras*, TechCrunch (Feb. 23, 2026), `https://techcrunch.com/2026/02/23/americans-are-destroying-flock-surveillance-cameras` (last visited Aug. 28, 2026) [hereinafter Whittaker]; *119,000 Flock License Plate Cameras Track Drivers Nationwide: Map*, Fox News (2026), `https://www.foxnews.com/tech/license-plate-cameras-tracking-drivers-everywhere` (last visited Aug. 28, 2026).

23. Marlow & Stanley, *supra* note 2 (describing hot lists, alerting, and data sharing with police departments, neighborhood watch groups, and other private customers).

24. The uniformity is the defense the accessibility canon retired, and Part VII returns to it. *See infra* Part VII.A.

25. See 42 U.S.C. § 12102 (defining disability functionally, by substantial limitation of major life activities); 28 C.F.R. § 35.108.

26. The convergence is documented across the treatment literatures cited in this Part. For the exposure mechanism generally, see Edna B. Foa & Michael J. Kozak, *Emotional Processing of Fear: Exposure to Corrective Information*, 99 Psych. Bull. 20 (1986); Michelle G. Craske et al., *Maximizing Exposure Therapy: An Inhibitory Learning Approach*, 58 Behav. Rsch. & Therapy 10 (2014) (expectancy violation as the engine of new learning; removal of safety signals among the core strategies).

accompany more than 70 percent of first-episode psychosis presentations, drive withdrawal from shared space, and place roughly half their holders in the lowest 2 percent of population wellbeing.[27] Posttraumatic stress disorder contributes the hypervigilance and avoidance architecture of a disorder of current threat, maintained precisely because avoidance prevents the threat appraisal from updating.[28] Social anxiety disorder is built on the felt presence of an evaluating audience, and agoraphobia generalizes the avoidance to public space as such.[29] The class is not boutique: roughly half of Americans meet criteria for a mental disorder at some point in life.[30]

C. The Mechanism

The announced network closes the treatment channel in three clinical dialects at once. For the paranoia spectrum's severe end, the apex content of the hierarchy, coordinated organizational observation with records, becomes the published, marketed, accurately described condition of the street, so that reality testing returns confirmation rather than disconfirmation; the effect of public space on this population was already measurable before a single reader went up, and randomized urban exposure increases anxiety, negative beliefs about others, the jumping to conclusions bias, and paranoia itself.[31] For the trauma wing, the announcement installs genuine, labeled threat cues at every threshold of the territory treatment needs the person to reclaim, and for survivors whose

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27. Daniel Freeman et al., *Psychological Investigation of the Structure of Paranoia in a Non-Clinical Population*, 186 Brit. J. Psychiatry 427 (2005) (hierarchy, in a sample of more than a thousand); Daniel Freeman, *Persecutory Delusions: A Cognitive Perspective on Understanding and Treatment*, 3 Lancet Psychiatry 685 (2016).

28. Anke Ehlers & David M. Clark, *A Cognitive Model of Posttraumatic Stress Disorder*, 38 Behav. Rsch. & Therapy 319 (2000).

29. David M. Clark & Adrian Wells, *A Cognitive Model of Social Phobia*, *in* SOCIAL PHOBIA: DIAGNOSIS, ASSESSMENT, AND TREATMENT 69 (Richard G. Heimberg et al. eds., 1995); Ronald M. Rapee & Richard G. Heimberg, *A Cognitive-Behavioral Model of Anxiety in Social Phobia*, 35 Behav. Rsch. & Therapy 741 (1997); AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed., text rev. 2022) (agoraphobia).

30. Ronald C. Kessler et al., *Lifetime Prevalence and Age-of-Onset Distributions of DSM-IV Disorders in the National Comorbidity Survey Replication*, 62 Archives Gen. Psychiatry 593 (2005).

31. Lyn Ellett, Daniel Freeman & Philippa A. Garety, *The Psychological Effect of an Urban Environment on Individuals with Persecutory Delusions: The Camberwell Walk Study*, 99 Schizophrenia Rsch. 77 (2008); Freeman et al., *supra* note 27; Daniel Freeman & Philippa Garety, *Advances in Understanding and Treating Persecutory Delusions: A Review*, 49 Soc. Psychiatry & Psychiatric Epidemiology 1179 (2014) (proximal causal factors across the spectrum).

trauma was itself surveillance, stalking and intimate partner monitoring among them, it reinstates the harm's modality as municipal infrastructure.[32] For the scrutiny wing, the imagined audience becomes actual, continuous, and archival.[33] In the exposure literature's terms, the covered zone is engineered against expectancy violation: the prediction of being watched is guaranteed there rather than testable, and an exercise that cannot produce a mismatch cannot produce new learning.[34]

The population-level analogue is measured. Perceived surveillance suppresses willingness to voice minority views, and the legal literature carries a developed account of surveillance's suppression of lawful activity under the name of the chilling effect.[35] The class claim is that mechanism run at clinical gain: what chills the median resident's speech closes this class's streets. The entitlement the claim enforces is older than the statute, the right tenBroek named the right to live in the world, and scholarship has carried it off the pavement before, into the internet's spaces.[36]

IV. The Claim

A. Meaningful Access as the Standard

Alexander v. Choate supplies the governing measure and the governing discipline in the same opinion. The measure: an otherwise qualified individual must be provided with meaningful

32. Ehlers & Clark, *supra* note 28.

33. Rapee & Heimberg, *supra* note 29; Clark & Wells, *supra* note 29.

34. Craske et al., *supra* note 26; Foa & Kozak, *supra* note 26. The predicament was visible in the reasoning training literature fifteen years early: a participant exercising trained belief flexibility reasoned that ambient noises "could be a sign I'm under surveillance, but they could also be hallucinations or the neighbours." Helen Waller et al., *Targeting Reasoning Biases in Delusions*, 42 J. Behav. Therapy & Experimental Psychiatry 414 (2011). The exercise worked because the street could still adjudicate the alternatives.

35. Elizabeth Stoycheff, *Under Surveillance: Examining Facebook's Spiral of Silence Effects in the Wake of NSA Internet Monitoring*, 93 Journalism & Mass Commc'n Q. 296 (2016); Jonathon W. Penney, *Understanding Chilling Effects*, 106 Minn. L. Rev. 1451 (2022).

36. Jacobus tenBroek, *The Right to Live in the World: The Disabled in the Law of Torts*, 54 Calif. L. Rev. 841 (1966); Bradley A. Areheart & Michael Ashley Stein, *Integrating the Internet*, 83 Geo. Wash. L. Rev. 449 (2015); *see also* Samuel R. Bagenstos, *The Future of Disability Law*, 114 Yale L.J. 1 (2004) (structural limits of the antidiscrimination model).

access to the benefit the covered entity offers, and the benefit cannot be defined in a way that effectively denies that access; reasonable accommodations may be required to assure it.[37] The discipline: the Court rejected the boundless proposition that every disparate impact showing states a prima facie case, assuming only that the statute reaches some conduct with an unjustifiable disparate impact, and it sustained Tennessee's neutral fourteen-day Medicaid limit because the limit left disabled recipients with meaningful access to the benefit as defined.[38] The camera claim supplies what the failed Medicaid claim lacked: a documented mechanism by which the neutral feature forecloses the benefit itself for the class, rather than serving the class less generously.[39]

B. Methods of Administration

A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination.[40] An announced, deterrence-driven surveillance mesh over the right of way is a method of administering the mobility program if anything is: adopted by policy, calibrated by policy, marketed as administration, in the express service of an administrative goal.[41] The contractual arrangements clause anticipates the vendor structure precisely, and it forecloses the disclaimer the practitioner literature records cities making about third-party infrastructure planted in their own sidewalks.[42]

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37. Choate, 469 U.S. 287.

38. *Id.* The lesson for pleading: the claim that survives is framed as denial of meaningful access to a covered benefit, remedied through the statute's own modification machinery, and never as a naked statistical grievance.

39. *See supra* Part III.C.

40. 28 C.F.R. § 35.130(b)(3)(i).

41. The deterrence goal is the vendor's own account and the deployments' public justification. Marlow & Stanley, *supra* note 2; Whittaker, *supra* note 22.

42. Whaley et al., *supra* note 17 (practitioner accounts of responsibility shifting; the non-delegable duty answer); 28 C.F.R. § 35.130(b)(3)(i).

C. Reasonable Modification

The modification rule addresses what the city can be asked to change: reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination, unless the entity demonstrates fundamental alteration.[43] Every feature of the surveillance layer that does the excluding is a policy artifact in the regulation's plain sense: announcement calibration, signage siting, density and placement, retention periods, coverage disclosure, zone design.[44] The remedial conversation therefore has a wide palette between full deployment and removal, which is where Part VII's fundamental alteration analysis does its disciplining work.[45]

D. The Benefit-Definition Countermove

The strongest defense move runs through *Choate*'s second edge: characterize camera coverage as part of the definition of the benefit, a surveilled street being simply the street the city offers, as fourteen days of coverage was simply the Medicaid benefit Tennessee offered.[46] The characterization fails on the statute's own sorting. Tennessee's limit defined the quantum of the thing provided; there was no fourteen-day benefit standing apart from the number. A street stands entirely apart from its camera coverage: the benefit, passage, is complete without a single reader, was provided for a century before the first one, and continues identically in the communities that have declined or canceled deployments.[47] Coverage is something the city does to the program in the course of running it, and the regulations have a category for that: methods of administration.[48]

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43. 28 C.F.R. § 35.130(b)(7)(i).

44. The rejection votes of the past two years show each of these settings treated as an ordinary municipal choice. Marlow & Stanley, *supra* note 2; Whittaker, *supra* note 22.

45. *See infra* Part VII.B.

46. *Cf.* Choate, 469 U.S. 287 (sustaining the durational limit as a definition of the benefit).

47. Dozens of cities have rejected the cameras after public debate. Whittaker, *supra* note 22; Marlow & Stanley, *supra* note 2.

48. 28 C.F.R. § 35.130(b)(3)(i); *see supra* Part IV.B.

E. The Integration Mandate

A second regulatory frame reaches the same conduct from the segregation side. A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.[49] *Olmstead* holds that unjustified isolation of persons with disabilities is properly regarded as discrimination based on disability, reasoning that institutional confinement perpetuates unwarranted assumptions about capacity and severely diminishes everyday life activities.[50] The camera barrier produces the *Olmstead* injury by environmental operation rather than by placement decision: a class member for whom the covered zone is unusable is confined to the uncovered remainder, in the limit to the home, and the confinement flows from a policy artifact the entity adopted and can revise.[51] Pleading the integration frame alongside meaningful access gives the court two independent regulatory homes for the same mechanism, one keyed to the quality of access, one to the segregation that results when access fails.[52]

F. The Disparate Impact Lane After Sandoval

The outer lane deserves honest marking. *Sandoval* confined private enforcement of disparate impact regulations under Title VI, and defendants routinely argue the logic across.[53] The Ninth Circuit holds that *Sandoval* does not foreclose private disparate impact claims under Title II and Section 504, that the statutes support three theories of liability, and that the two run coextensively.[54] The claim built in this article does not need the contested lane: it travels as a meaningful access and reasonable modification claim, the framing *Choate* itself blesses, with

49. 28 C.F.R. § 35.130(d).

50. Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581 (1999).

51. The fit is with the integration mandate's principle rather than *Olmstead*'s facts, which concerned institutional placement; the closure for the distinction is that § 35.130(d) speaks to administration of services generally, and the mobility program is a service. 28 C.F.R. § 35.130(d); *see* Olmstead, 527 U.S. 581.

52. On the complementarity of the frames, see 42 U.S.C. § 12101(a)(2) (finding that "society has tended to isolate and segregate individuals with disabilities"); § 12101(a)(5).

53. Sandoval, 532 U.S. 275.

54. *Payan I*, 11 F.4th 729 (9th Cir. 2021).

the disparate impact vocabulary confined to describing the mechanism rather than naming the theory.[55] Section 504 travels alongside wherever the right of way takes federal money, with the two statutes interpreted in pari materia.[56]

V. The Plaintiff

A. Injury in Fact for the Deterred Resident

Article III requires injury in fact, causation, and redressability, and the injury must be concrete, particularized, and actual or imminent.[57] The apparent trap is *Lyons*: a plaintiff seeking an injunction cannot rest on past injury without a sufficient likelihood of future encounter.[58] The trap does not close here, because the claim's injury is present and continuing rather than past and speculative: the announced network operates today, the class member's avoidance is occurring today, and the policy that produces it is standing municipal practice rather than the isolated encounter *Lyons* disclaimed.[59]

Laidlaw supplies the affirmative model. Environmental plaintiffs establish injury by averring that they use the affected area and that reasonable concerns about the defendant's conduct diminish or deter that use; the injury is the curtailment itself, and it does not require proof that the feared harm has independently materialized.[60] The deterred class member's declaration writes itself in the same grammar: residence near or routine need for the covered zone, knowledge of the announced network, the clinically grounded reason the announcement

55. *See* Choate, 469 U.S. 287; 28 C.F.R. § 35.130(b)(7)(i). The closure: in a circuit that follows *Payan I*, the impact theory is available as a second count; in a circuit that resists it, nothing in the primary claim is lost.

56. 29 U.S.C. § 794; Frame, 657 F.3d 215; Whaley et al., *supra* note 17 (tracing the transportation funding statutes and quoting the waiver structure of the funding condition).

57. Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992).

58. Lyons, 461 U.S. 95.

59. *Cf.* Lyons, 461 U.S. 95 (chokehold encounter, with future application contingent on a chain of speculation). The camera announcement is contingent on nothing; it is the advertised, continuous condition of the space.

60. Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167 (2000).

makes the zone unusable, and the concrete curtailment that followed, the abandoned commute, the rerouted trip, the appointment forgone.[61]

B. The Deterrence Standing Line

The accessibility cases converted this structure into settled doctrine. A plaintiff deterred from patronizing a store by known barriers suffers ongoing injury and need not engage in the futile gesture of repeated visits; encountering a barrier or being deterred by knowledge of it suffices; deterrence from a facility one would otherwise use is itself the injury.[62] Title III's text writes the principle into statute: a person with actual notice that an entity does not intend to comply need not engage in a futile gesture.[63] The Tenth Circuit carries the standing architecture to Title II itself, holding that the statute's text confers standing to the full limits of Article III, that testers have standing under Title II, and that an averred intent to use the buses several times per year is a concrete plan rather than a someday intention.[64] *Frame* completes the temporal fit: the claim accrues when the plaintiff knew or should have known of the denial, a trigger that already treats deterred nonuse, staying home, as the experience of denial.[65]

One turbulence deserves a closure. The Supreme Court granted certiorari on tester standing and then dismissed the case as moot, vacating below, so the tester question remains open.[66]

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61. Concreteness after *TransUnion* is satisfied by harms with a close relationship to those traditionally recognized, and exclusion from public accommodations and public benefits sits deep in that tradition. TransUnion, 594 U.S. 413; *cf.* Lane, 541 U.S. 509. The same opinion holds that the mere risk of future harm, without more, is not a concrete harm in a suit for damages; the damages counts here therefore plead the materialized curtailment itself, the trip abandoned and the cost incurred, never bare exposure to risk. TransUnion, 594 U.S. 413.

62. Pickern, 293 F.3d 1133; Chapman, 631 F.3d 939 (en banc) (an ADA plaintiff who has encountered or is deterred by a barrier has standing to sue for injunctive relief); Kreisler, 731 F.3d 184 (deterrence from entering establishes standing).

63. 42 U.S.C. § 12188(a)(1).

64. Tandy, 380 F.3d 1277 (holding that tester standing exists under Title II and that an intent to use the buses several times per year supports prospective relief as a concrete, present plan).

65. Frame, 657 F.3d 215.

66. Acheson Hotels, LLC v. Laufer, 601 U.S. 1 (2023) (vacating as moot and expressly leaving the tester split unresolved). The closure: nothing here rides on tester standing. The plaintiffs contemplated are residents with concrete, preexisting use interests in their own streets, deterred from exercising them, the exact configuration *Laidlaw* and the deterrence line credit, and the opposite of a manufactured encounter.

C. Pleading the Clinical Predicate

The deterrence cases involve barriers whose operation on the plaintiff is self-evident; a step excludes a chair on sight. The camera claim adds one pleading layer: the complaint must connect the announcement to the exclusion through the plaintiff's disability, which means pleading the diagnosis or the functional limitation, the treatment channel, and the mechanism.[67] The layer is familiar rather than novel: every Title II plaintiff pleads a qualifying disability and its interaction with the challenged feature, and courts routinely receive treating clinician declarations for the interaction.[68] What the layer costs is exposure, and exposure is what the next section's architecture exists to manage.

D. Associational and Organizational Standing

The class this claim serves is stigmatized twice over, by psychiatric diagnosis and by the content of the diagnosis, and a named plaintiff requirement that forces public self-identification as a person with persecutory delusions would price the courthouse out of reach for the people with the strongest claims.[69] The answer is the associational standing of *Hunt*: an association has standing when its members would otherwise have standing, the interests at stake are germane to its purpose, and neither the claim nor the relief requires individual participation.[70] A disability rights organization with members in the class satisfies the test for injunctive and declaratory relief, where individual participation is unnecessary, and member declarations can be received under seal or pseudonymously where the district court's protective practice allows.[71] *Havens*

67. *See supra* Part III.C. The clinical corpus supplies the general causation account; the declaration supplies the specific one.

68. *See* 42 U.S.C. § 12102; 28 C.F.R. § 35.108; Chapman, 631 F.3d 939 (requiring factual allegations connecting the encountered barrier to the plaintiff's particular disability, a bare list of technical violations failing the injury in fact requirement); *cf.* Duvall v. County of Kitsap, 260 F.3d 1124 (9th Cir. 2001) (interaction of disability with the entity's chosen accommodation litigated on declarations and denial records).

69. The severity gradient runs the wrong way for named plaintiffs: foreclosure is sharpest exactly where public self-identification is hardest. *See* Freeman, *supra* note 27.

70. Hunt v. Wash. State Apple Advert. Comm'n, 432 U.S. 333 (1977).

71. The individual-participation prong is why the associational vehicle fits injunctive relief and fits damages poorly; damages claims are the named plaintiffs' lane. *See* Hunt, 432 U.S. 333.

Realty adds the organizational track, and the track must be walked as the Supreme Court has since narrowed it: an organization suffers injury in its own right where the challenged conduct directly interferes with its core service activities, while advocacy expenditure and self-directed diversion of resources no longer qualify.[72]

E. The Class Action

Rule 23(b)(2) was written for this configuration: the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive or declaratory relief is appropriate respecting the class as a whole.[73] *Dukes* demands a common question whose truth or falsity resolves an issue central to every claim in one stroke, and it teaches that commonality fails where the challenged conduct is a constellation of discretionary decisions.[74] The camera claim inverts the *Dukes* problem. The challenged conduct is a single announced policy, one network, one announcement, one administrative choice, operating identically on every class member's access; the common questions, whether the announced network denies meaningful access to the class as defined and whether modification is reasonable, are answered for everyone or no one.[75] Certification under (b)(2) requires no predominance showing and issues one indivisible injunction, which is the relief the class claim seeks; damages travel with named plaintiffs, because (b)(2) does not authorize individualized monetary relief.[76]

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72. Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982); FDA v. All. for Hippocratic Med., 602 U.S. 367 (2024) (holding that an organization "cannot spend its way into standing simply by expending money to gather information and advocate," and confining *Havens* to conduct interfering with an organization's core activities). The closure: a mental health services provider whose clients, staff accompaniment protocols, and treatment plans must be rerouted around the covered zone pleads interference with the services themselves, the configuration that survives the narrowing; a complaint built on advocacy or monitoring expenditure does not. A concurrence in the same case questions associational standing's foundations generally; the majority applied the conventional doctrine.

73. Fed. R. Civ. P. 23(b)(2).

74. Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011).

75. *Cf.* Dukes, 564 U.S. 338. The class definition follows Part III.B's mechanism definition, which is functional and objective: persons with disabilities for whom announced organizational observation is clinical content and whose access to the mobility program the network forecloses or burdens. Membership turns on diagnosis-level facts of the kind disability class actions routinely administer.

76. Fed. R. Civ. P. 23(b)(2); *see* Dukes, 564 U.S. 338 (describing the indivisible nature of (b)(2) relief and holding the rule does not authorize class certification of individualized monetary claims). The contrast that makes the fit visible: *Dukes* found no commonality in "a policy against having uniform employment practices," delegated discretion exercised millions of ways; the announced network is the uniform practice that case found missing.

VI. Remedies and Their Limits

A. Injunctive Relief

The primary remedy is the modification conversation conducted with authority: an order requiring the entity to assess and modify announcement calibration, density and placement in residential pedestrian zones, retention, coverage disclosure sufficient to allow planning of usable routes, and unannounced zone design in areas of low enforcement value, with the fundamental alteration line litigated on a record rather than asserted in the abstract.[77] The curb ramp cases supply the template of supervised, scheduled compliance.[78]

B. Damages and the Intent Gate

Compensatory damages under Title II and Section 504 require intentional discrimination, which most circuits measure by deliberate indifference: knowledge that a federally protected right is substantially likely to be violated and failure to act on that likelihood.[79] The announcement record is unusually favorable to the showing, because notice is the system's design: a demand letter and denial convert the standing policy into a documented refusal, and the deterrence purpose concedes that the entity intends the announcement to change behavior.[80]

77. 28 C.F.R. § 35.130(b)(7)(i); *see infra* Part VII.B. The closure for mid-suit retreat: a deployment paused after the complaint does not moot the claim, because the entity bears the formidable burden of showing it absolutely clear that the conduct could not reasonably be expected to recur. Laidlaw, 528 U.S. 167; Tandy, 380 F.3d 1277 (applying the standard to a transit fleet upgraded during litigation).

78. *See* Whaley et al., *supra* note 17 (documenting settlement and consent structures in the sidewalk litigation); Culvahouse, 679 F. Supp. 2d 931.

79. Duvall, 260 F.3d 1124 (holding that "[d]eliberate indifference requires both knowledge that a harm to a federally protected right is substantially likely, and a failure to act upon that" likelihood, and adopting the standard over the discriminatory animus alternative). The same opinion holds the public entity answers for its employees' acts under respondeat superior in direct Title II and Section 504 suits. The definition remains the circuit's operative standard, restated in Updike v. Multnomah County, 870 F.3d 939 (9th Cir. 2017), and applied in the circuit's published decisions since.

80. *See* Duvall, 260 F.3d 1124; Marlow & Stanley, *supra* note 2. The intent gate is about the accommodation refusal, never about animus.

C. The Post-Cummings Architecture

Cummings holds that emotional distress damages are unavailable under the Spending Clause statutes, reasoning from the contract analogy that funding recipients lack clear notice of such liability.[81] The Ninth Circuit extends the bar to Title II, the Eleventh Circuit has reached the same conclusion, and the Ninth expressly preserves compensatory damages for lost educational opportunities as economic harm.[82] The consequence for this class must be stated without flinching: the injuries the mechanism produces are heavily emotional, psychological, and dignitary, which is exactly the category *Cummings* forecloses, so the damages case must be built on the economic skeleton of the exclusion.[83] The skeleton exists: transportation replacement costs for routes abandoned, lost wages and lost employment opportunities where the covered zone stands between the person and work, treatment costs where the network's operation intensifies care needs, and the lost-opportunity category *Payan II* preserves, translated from the educational setting to the mobility program's own benefits.[84] Attorney's fees follow the statute.[85]

VII. Defenses

A. Uniformity

The threshold defense, that the cameras photograph every vehicle and the announcement addresses every resident, is the staircase defense, and the accessibility canon retired it: a facially

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81. Cummings, 596 U.S. 212 (2022).

82. Payan v. L.A. Cmty. Coll. Dist. (*Payan II*), 169 F.4th 971, 977 (9th Cir. 2026) (emotional distress damages barred under Title II); *id.* at 977–79 (both holdings); *id.* at 978–79 (lost educational opportunities compensable as economic harm). The practitioner literature documents both developments: Marc Charmatz, *New Appeals Court Case Finds Title II Does Not Allow for Emotional Distress Damages*, 30 Disability Compliance for Higher Educ. 3 (2024) (reporting the Eleventh Circuit's holding that emotional distress damages are unavailable under Title II because Title II incorporates the Rehabilitation Act's remedies); Marc Charmatz, *Ninth Circuit: Title II/Section 504 Allows Damages for Lost Educational Opportunity*, 31 Disability Compliance for Higher Educ. 3 (2026) (reporting *Payan II*'s preservation of lost-opportunity damages).

83. Cummings, 596 U.S. 212; *Payan II*, 169 F.4th at 977–79.

84. *Payan II*, 169 F.4th at 978–79. The pleading discipline: itemize the economic consequences of informed avoidance from the first complaint, because the emotional core of the injury, however real, cannot carry the damages count.

85. 42 U.S.C. § 12205.

neutral feature that forecloses access for a protected class is what the meaningful access standard exists to catch.[86]

B. Fundamental Alteration and Undue Burden

The fundamental alteration defense is real and disciplines the remedy rather than defeating the claim; the wide modification palette means the entity must litigate which adjustments alter the program's nature rather than asserting that any adjustment does.[87] Undue burden runs the same way, and the sidewalk litigation shows courts requiring proof rather than accepting the label.[88] Where the challenged feature enters through new deployment, the alteration lens narrows the lane further: the undue burden defense is "carefully limited to existing facilities" and unavailable for alterations, and a network installed into the right of way is the program altered, never the program as found.[89] The defense also carries an awkward passenger: the record that proves the network's public safety value is a record of the announcement working as designed, which is a record of the mechanism.[90]

C. Sovereign Immunity

Against the typical defendant the defense is absent: municipalities have never enjoyed Eleventh Amendment immunity.[91] Where a state entity administers the right of way, three tracks remain. *Lane* sustains Title II abrogation as applied to the class of cases implicating fundamental access; *United States v. Georgia* holds abrogation valid at least for conduct that itself violates the Fourteenth Amendment, insofar as the Title II claim and the constitutional violation coincide; and

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86. Choate, 469 U.S. 287; Lane, 541 U.S. 509; Frame, 657 F.3d 215.

87. 28 C.F.R. § 35.130(b)(7)(i); *cf.* Olmstead, 527 U.S. 581 (fundamental alteration measured against the entity's actual resources, its obligations to others it serves, and the presence of a comprehensive, effectively working plan).

88. Culvahouse, 679 F. Supp. 2d 931 (undue burden defense unproven); *see* 28 C.F.R. § 35.150(a)(3).

89. Kinney, 9 F.3d 1067 (holding the undue burden defense limited to existing facilities and unavailable in the context of alterations).

90. *See supra* Part III.C.

91. Lincoln County v. Luning, 133 U.S. 529 (1890).

Section 504's funding waiver operates wherever the money is taken, on the structure the survey literature quotes.[92]

VIII. Comparative Anchors

The comparative section carries one message: the same barrier is being named under other instruments, and the instruments that reach it do so through duties the ADA already contains in domestic form.

The Convention on the Rights of Persons with Disabilities obligates states parties to ensure access to the physical environment on an equal basis with others and to recognize the right to live in the community with choices equal to others, full inclusion, and participation.[93] Article 9's accessibility duty and Article 19's community inclusion duty are the treaty's versions of program access and the integration mandate, and a surveillance layer that forecloses community participation for a psychosocial disability class engages both on the treaty's own terms.[94]

The United Kingdom's Equality Act imposes on service providers and public functions an anticipatory duty of reasonable adjustments, owed to disabled persons at large and in advance of any individual request, where a provision, criterion, or practice puts disabled persons at a substantial disadvantage.[95] And the United Kingdom's courts have already held a police surveillance deployment unlawful partly under an equality statute. In *Bridges*, the Court of Appeal held South Wales Police's automated facial recognition program unlawful, allowing the appeal on the legality of the interference with private life and on the public sector equality duty, because the force never took reasonable steps to make enquiries about whether the

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92. Lane, 541 U.S. 509; United States v. Georgia, 546 U.S. 151 (2006) (prescribing claim-by-claim analysis: which conduct violates Title II, to what extent it also violates the Fourteenth Amendment, and whether abrogation is otherwise valid for the remainder); 29 U.S.C. § 794; Whaley et al., *supra* note 17 (quoting the waiver-by-acceptance structure).

93. Convention on the Rights of Persons with Disabilities arts. 9, 19, Dec. 13, 2006, 2515 U.N.T.S. 3. The United States has signed the Convention; the Senate has not ratified it, and the citation here is comparative rather than binding.

94. *Id.*; *cf.* 28 C.F.R. §§ 35.130(d), 35.149 to 35.151.

95. Equality Act 2010, c. 15, §§ 20–21, 29, sch. 2 (UK). The anticipatory character is the instructive feature: the duty attaches to the design of the practice, before any identified individual is turned away.

software carried bias on race or sex grounds; the duty, the court explained, requires the taking of reasonable steps to inquire into the potential impact of a proposed policy on people with protected characteristics.[96] The transposition writes itself: an equality instrument reached a surveillance deployment at the design stage, on the ground that the deployer never assessed the technology's differential impact on a protected class, which is the assessment the camera claim says American cities never performed for the psychiatric disability class.[97]

Canada supplies the constitutional analogue. In *Eldridge*, the Supreme Court of Canada held that once government provides a benefit, it must provide it without discrimination, and that the failure to fund sign language interpretation in medically necessary hospital services denied deaf patients the equal benefit of the law; effective communication was part of the benefit itself.[98] The Federal Court has applied the principle to federal service delivery.[99] *Eldridge*'s teaching is the meaningful access teaching in constitutional dress: the benefit is measured by what the claimant can in fact use, and the state's obligation follows the benefit it chose to provide.[100]

IX. Conclusion

The claim's substance was settled by the accessibility canon; this article's work has been to show that the plaintiff's path was too. The right of way is a program, and the first hazard, the enforceable-regulation split, is avoided by a pleading decision. The claim travels on meaningful access, methods of administration, reasonable modification, and the integration mandate, with the contested disparate impact lane held in reserve. The deterred resident has standing on the model the accessibility cases built and *Laidlaw* generalized; the association and the organization can carry the claim where exposure would otherwise price out the class's severe edge; and the

96. R (Bridges) v. Chief Constable of S. Wales Police [2020] EWCA Civ 1058, [163], [182], [202] (Eng.) (setting out the section 149 duty; describing the reasonable-steps inquiry obligation; allowing the appeal on Ground 5).

97. *Id.*; *cf.* 28 C.F.R. § 35.130(b)(3)(i) (methods of administration measured by effect).

98. Eldridge v. British Columbia (Att'y Gen.), [1997] 3 S.C.R. 624 (Can.).

99. Canadian Ass'n of the Deaf v. Canada, 2006 FC 971 (Can.), `https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/52788/index.do` (last visited Aug. 28, 2026).

100. *Cf.* Choate, 469 U.S. 287.

class certifies on the single common policy that *Dukes* demands. Damages must be built on the economic skeleton because *Cummings* forecloses the injury's emotional core, and the defenses discipline the remedy rather than defeat the claim. Sixty years ago tenBroek measured disability law by the disabled person's title to be abroad in the land.[101] The title is unchanged. Only the barrier is new, and the courthouse doors this article maps were opened for its predecessors.

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101. tenBroek, *supra* note 36.

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