

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

MARIA SALINAS

Plaintiffs,

VS.

CITY OF NEW BRAUNFELS

Defendant.

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CIVIL ACTION NO. SA-06-CA-0729XR

**DEFENDANT CITY OF NEW BRAUNFELS' MOTION TO DISMISS**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE XAVIER RODRIGUEZ:

NOW COMES **CITY OF NEW BRAUNFELS**, Defendant in the above entitled and numbered cause, and files this its Motion to Dismiss pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure and in support thereof would show unto the Court the following:

**I.**

The case at bar concerns an incident which occurred on September 23, 2004 when Plaintiff Salinas returned to her apartment and found her boyfriend dead on her couch. Plaintiff Salinas uses American Sign Language (ASL) to communicate. Plaintiff Salinas went to her neighbor's apartment seeking assistance for her neighbor to call 9-1-1. City of New Braunfels Police Officers responded to the location along with emergency services personnel. Defendant **CITY OF NEW BRAUNFELS** would show unto the Court that its police officers did attempt to locate an interpreter through dispatch but were unsuccessful. Subsequently, an interpreter known to the Plaintiff did arrive and did interpret for the Plaintiff. (See Paragraph 27 of Plaintiff's Original Complaint). Plaintiff's suit is brought pursuant to Section 504 of the Rehabilitation Act of 1973 as

Amended 29 U.S.C. §794 (§504) and Title II of the Americans with Disabilities Act of 1990 42 U.S.C. §12131 *et. seq.* (ADA).

## II.

Defendant **CITY OF NEW BRAUNFELS** asserts unto the Court that the leading Fifth Circuit case in this area is *Hainze v. Richards*, 207 F.3d 795 (5<sup>th</sup> Cir. 2000). In *Hainze*, Judge Politz analyzed ADA claims and §504 claims in the context of law enforcement. The Court in *Hainze*, held that the officer's use of deadly force to restrain the Plaintiff was not actionable under the ADA and that the County had not failed to reasonably accommodate Plaintiff's disability. The Court reasoned as follows:

“Despite Hainze's claims we hold that Title II does not apply to an Officer's on the street responses to reported disturbances or other similar incidents, whether or not those calls involve subjects with mental disabilities, prior to the officer securing the scene and insuring that there is no threat to human life.” *Id.* at 801.

The language in *Hainze* which has caused some uncertainty is found in head note 5 as follows:

“Once the area was secure and there was no threat to human safety, the Williamson County Sheriff's Deputies would have been under a duty to reasonably accommodate Hainze's disability in transporting him to a mental facility.” *Id.* at 802.

In the case at bar, Plaintiff Salinas was not placed under arrest and was not the subject of a criminal investigation as contemplated by *Hainze*. Defendant **CITY OF NEW BRAUNFELS** assert that Plaintiff Salinas' reporting of an incident wherein she requested police respond to her apartment does not fall in the category of “services, programs or activities of a public entity” of Title II as contemplated in *Hainze*.

In an analogous case to the one at bar, *Bircoll v. Miami-Dade County*, Case No. 05-2054-CIV – Moreno (S.D. Fla. 2006), the trial court granted summary judgment to Defendant Dade County on Plaintiff's allegations under Title II of the Americans with Disabilities Act and the Rehabilitation Act. In *Bircoll*, the plaintiff was stopped, detained and arrested for driving under the influence. The Court analyzed the Fifth Circuit case of *Hainze v. Richards* and held that the plaintiff was not complaining of his handling or transportation to the station house, but rather for the underlying arrest. The Court held there is no casual link between the plaintiff's disability and the wrongful arrest in granting the summary judgment.

Defendant **CITY OF NEW BRAUNFELS** asserts unto the Court that the Plaintiff has failed to state a cause of action under the facts of her complaint under *Hainze v. Richards*, as a matter of law.

**WHEREFORE, PREMISES CONSIDERED** Defendant **CITY OF NEW BRAUNFELS** prays that its Motion to Dismiss be in all things granted and for such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT  
**CITY OF NEW BRAUNFELS**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of September, 2006, I electronically filed the foregoing Defendant City of New Braunfels' Motion to Dismiss with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Ms. Lucy D. Wood  
Advocacy, Incorporated  
7800 Shoal Creek Blvd., Suite 142-S  
Austin, Texas 78757

And I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participant:

Thomas J. Crane  
Attorney at Law  
6800 Park Ten Blvd., Suite 208-N  
San Antonio, Texas 78213

/s/ Charles S. Frigerio

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**ORDER**

On this day came on to be considered, Defendant **CITY OF NEW BRAUNFELS'** Motion to Dismiss pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure and the Court after having considered the Motion, finds said Motion to be meritorious;

**IT IS THEREFORE ORDERED,** that Defendant **CITY OF NEW BRAUNFELS** is dismissed from this lawsuit with prejudice.

SIGNED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2006.

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XAVIER RODRIGUEZ  
UNITED STATES DISTRICT JUDGE