



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 02 2010

Mr. Billy J. Williams  
1419 Creekview Drive  
Lewisville, TX 75067-4995

Dear Mr. Williams:

This responds to your letter to President Barack Obama (WH #07272010-127), which was referred to the Department of Justice (the Department) for response. In your letter, you allege that the Department discriminates against the "breathing disabled" in violation of the Americans with Disabilities Act (ADA) by failing to impose a smoking ban. In your letter you request that the President review these actions by the Department, as well as the actions of three other federal agencies that have similar policies. You indicate that you plan to file a complaint with the United Nations alleging "violation of the International Treaty on the Rights of People with Disabilities" if the President does not take action to remedy these alleged violations.

Over the past few years, the Civil Rights Division has received and responded to many prior letters from you, or written on your behalf, repeating this claim. Each time we have received a letter, we have reviewed the allegations set forth in it, along with the supporting material that you have provided, and we have responded, stating our conclusion that the ADA (and/or Section 504 of the Rehabilitation Act of 1973, as amended, in those situations where it was applicable) does not require covered entities to enact legislation or to adopt policies to ban smoking in the manner that you propose. Further, in responding to those letters where you set forth your interpretation of the ADA, we have explained our interpretation of the ADA.

In your most recent letter to President Obama, you have added an allegation that "...the Department of Justice (DOJ) refuses to process complaints against the *breathing disabled* (emphasis added) whose disabilities are caused or exacerbated by second hand tobacco smoke under Title II and Title III of the Americans with Disabilities Act (ADA)." To support this allegation you cite (and attach) a letter dated April 29, 2010, from Ms. Jeanine Worden, declining to open a complaint you filed with the Disability Rights Section (DRS), Civil Rights Division, of the Department of Justice. The letter states that, because of the hundreds of

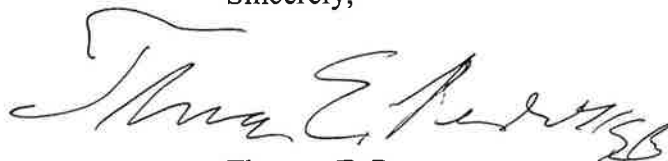
complaints received each year, “we do not have the resources to resolve all of them.” The letter explicitly states that no determination has been made “regarding the merits of your complaint or whether it could be pursued under the ADA or another statute.” The letter also points out that the decision by the DRS does not affect your right to pursue your complaint in another manner and includes a list of agencies and groups in your state that may be of assistance to you. This letter, which declines to open a complaint based on resource limitations, does not support your statement that the Department of Justice refuses to open an entire class of complaints against the “breathing disabled.”

In fact, under the ADA, covered entities are required to make reasonable modifications to their policies, practices, or procedures when such modifications are necessary to enable individuals with disabilities to participate in programs or to receive goods and services provided by the covered entity unless the covered entity can demonstrate that the modifications would fundamentally alter the nature of its programs or services. There are, therefore, situations where the ADA would provide protections for persons with “breathing disabilities.” For example, it may be a reasonable modification for a covered entity to place restrictions on smoking in a facility on behalf of an individual with a disability who has asthma or any other condition that significantly restricts respiratory functioning and the Department has the ability to open an investigation of such a complaint, resources permitting.

While we appreciate your concern for individuals with disabilities who may be affected by second hand smoke, we have previously explained that the ADA does not provide the Federal government with authority to create a blanket requirement banning smoking in all facilities covered by the ADA. However, the ADA does not prevent a covered entity from having a no smoking policy. The Department has consistently interpreted the ADA as permitting restrictions on smoking. In addition, in those circumstances where a covered entity allows smoking, it may be required to make reasonable modifications to limit or ban smoking where necessary to avoid discrimination as long as it does not result in a fundamental alteration. The ADA requires the analysis of requested modifications to be made on a case-by-case basis. If you are aware of individual instances where restrictions on smoking are necessary to allow persons with disabilities to participate in a particular program, we ask that you send information concerning those circumstances to us.

We hope that this information is useful to you and suggest that you may wish to consult private counsel to address any further concerns and issues you may have. We regret that we are unable to help you further.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas E. Perez". The signature is fluid and cursive, with a large initial "T" and "P".

Thomas E. Perez  
Assistant Attorney General