

# United States Court of Appeals For the First Circuit

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No. 02-1099

MATTHEW KIMAN,  
Plaintiff, Appellant,  
and  
UNITED STATES,  
Intervenor,  
v.

NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS, ET AL.,  
Defendants, Appellees.

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## ERRATA SHEET

The opinion of this Court issued on August 20, 2002, is amended as follows:

On page 27, line 20, insert the following after the sentence ending "entirely fatal.": Post-Garrett, two circuits have suggested that under some circumstances, the Eleventh Amendment immunity of the states is validly abrogated by Title II. First, a divided Sixth Circuit, sitting en banc, held that such an abrogation can occur with due process-type claims under Title II. Popovich v. Cuyahoga County Ct. of Common Pleas, Dom. Rel. Div., 276 F.3d 808 (6th Cir. 2002) (en banc). Similarly, the Second Circuit has suggested that valid abrogation can occur when a plaintiff alleges discriminatory intent, but it has never found any such abrogation. Garcia v. S.U.N.Y. Health Scis. Ctr., 280 F.3d 98 (2d Cir. 2001).

The next sentence, beginning "The Fifth Circuit", begins a new paragraph.

At page 28, line 14, insert a paragraph break before the sentence beginning "Finally".

At page 28, line 15, delete "Second, Sixth," and the comma following Eighth.

At page 28, lines 17-20, delete the following: Popovich v. Cayuahoga County Ct. of Common Pleas, Dom. Rel. Div., 276 F.3d 808 (6th Cir. 2002) (en banc); Garcia v. S.U.N.Y. Health Scis. Ctr., 280 F.3d 98 (2d Cir. 2001);