No. 25-140

IN THE

Supreme Court of the United States

October Term 2025

The State of Franklin Department of Social and Health Services, et al,

Petitioners,

v.

Sarah Kilborn, et al.,

Respondents.

and

The United States of America

Intervenor-Respondents

On Writ of Certiorari to the
United States Court of Appeals
for the Twelfth Circuit

BRIEF FOR RESPONDENT

Team 3402

ATTORNEYS FOR RESPONDENT

QUESTIONS PRESENTED

I. Whether the Department of Justice's interpretation of their own regulation stating that those at risk of institutionalization can bring a claim under Title II of the Americans with Disabilities Act is entitled to deference under *Auer v. Robbins.*

II. Whether the United States' statutory enforcement authority under Title II of the Americans with Disabilities Act and institutional responsibility for ensuring federal civil rights compliance establish a sufficient interest relating to the subject matter of private ADA litigation to warrant intervention as of right under Federal Rule of Civil Procedure 24(a)(2).

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

UNITED STATES SUPREME COURT CASES:

UNITED STATES CIRCUIT COURT OF APPEALS CASES:

STATE COURT AND DISTRICT OF COLUMBIA CASES:

CONSTITUTIONAL AND STATUTORY PROVISIONS:

OTHER SOURCES:

OPINIONS BELOW

The opinion of the United States District Court for the District of Franklin is unreported but appears on pages 1–9 of the record, where the District Court GRANTED the United States' motion to intervene. The opinion of the United States District Court of the District of Franklin is also unreported but appears on pages 11–21, where the District Court GRANTED the Plaintiffs' and the United States' motion for summary judgment and DENIED the Defendant's motion for summary judgment. Finally, the unreported opinion of the United States Court of Appeals for the Twelfth Circuit appears on pages 22–29 of the record, where the Court of Appeals affirmed the District Court's judgment. Chief Judge Hoffman filed a dissenting opinion that appears on pages 31–38 of the record.

STATUTORY PROVISIONS AND RULES INVOLVED

The following statutes and rules relate to this case: 28 C.F.R. § 35.130(d); 29 U.S.C. § 794a(a)(2); 42 U.S.C. § 12101; 42 U.S.C. § 12132; 42 U.S.C. § 12133; 42 U.S.C. § 12134; 42 U.S.C. § 2000d-1; Fed. R. Civ. P. 24(a)(2). These statutes and rules are reprinted in Appendix A.

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

***This litigation*.** Sarah Kilborn was diagnosed with bipolar disorder in 1997. R. at 12. Over the years, Ms. Kilborn has tried various methods to manage her condition, including medication, inpatient treatment, and, unfortunately, self-harm attempts. R. at 12. After a depressive episode, she voluntarily admitted herself to Southern Franklin Regional Hospital in 2002 for inpatient care, staying there until 2004. R. at 12. Despite her release, Ms. Kilborn continued to experience severe bipolar and depressive episodes and was re-admitted to the same hospital in 2011. R. at 12. During

her institutionalization in 2013, her doctor decided she could benefit from a transfer to a community mental health facility. R. at 13. That said, the closest state-operated facility was three and a half hours away, and she could not afford private care. R. at 13. Because the State of Franklin did not provide a local state-run facility, Ms. Kilborn remained institutionalized for two more years until she was well enough to be released. R. at 13. Again in 2018, Ms. Kilborn was institutionalized at Southern Franklin Regional Hospital for a third time and stayed until 2021. R. at 13. Ms. Kilborn spent nine years of her life institutionalized in inpatient mental health facilities.

Eliza Torrisi was diagnosed with bipolar disorder in 2016 when she was only a teenager. R. at 14. Despite her efforts to manage her condition with medication and psychotherapy, she experienced severe bipolar episodes—posing a danger to herself and others. R. at 14. Her parents faced the difficult choice of admitting Ms. Torrisi to Newberry Memorial Hospital, a state-run facility in Franklin. R. at 14. While hospitalized, she received inpatient care that reduced the frequency of her episodes. R. at 14. In 2020, her doctor concluded she could be discharged to a community mental health center to continue inpatient treatment in a more social and less restrictive environment. R. at 14. Unfortunately, there were no state or private mental health facilities within four hours of her home. R. at 14. The only state-operated community mental health center in Franklin did not provide the inpatient treatment she needed. R. at 14. Ms. Torrisi was released from Newberry Memorial Hospital in 2021, only to be readmitted a few months later and discharged after an additional five months of inpatient care. R. at 14.

Malik Williamson has lived with schizophrenia since 1972. R. at 14. Over the past 50 years, Mr. Williamson has received inpatient and outpatient treatment at several hospitals in Franklin. R. at 14. In 2017, Mr. Williamson's daughter and guardian admitted him to Franklin State University Hospital. R. at 15. Mr. Williamson experiences hallucinations and delusions that have led him to

threaten himself and others. R. at 15. He underwent two years of inpatient treatment at Franklin State University Hospital and received a new medical regimen. R. at 15. His doctor informed him he could be discharged to a community mental health center for continued inpatient treatment. R. at 15. Unfortunately, the nearest private facility offering inpatient care was more than two hours away, and his doctor believed having a nearby support system was crucial. R. at 15. Mr. Williamson remained at Franklin State University Hospital for two more years until his doctor considered him stable enough to receive outpatient care at the State's community mental health facility. R. at 15.

Community mental health facilities provide mental health services in environments that support patients in integrating into their communities, which inpatient hospitalization does not. R. at 13. They offer inpatient, outpatient, and daily treatment options for individuals with mental health disorders. R. at 13. The benefits of receiving inpatient care at a community mental health facility include allowing frequent and extended time with visitors, patient outings, and encouraging more free interaction with other patients. R. at 14. Similarly, when patients receive daily treatment at a community mental health facility, they can live at home, work, and carry on with their daily lives without unnecessary restrictions. R. at 13. Despite being one of the largest states with over 600,000 residents, Franklin has only one community mental health facility. R. at 15-16. To make matters worse, this single community health facility does not offer inpatient programs due to Franklin's budget constraints. R. at 16. In 2021, Franklin's legislature increased funding to the Department of Health and Social Services by five percent, but to date, none of that money has been used to establish more community mental health facilities. R. at 16.

The regulatory scheme. Ms. Kilborn, Ms. Torrisi, and Mr. Williamson's stories are far from unique; our nation has an unfortunate history of ostracizing individuals with disabilities from

meaningful participation in our society. 42 U.S.C. § 12101(a)(1). In 1990, Congress formally recognized that individuals with disabilities have the "right to fully participate in *all* aspects of society" with the most sweeping piece of civil rights legislation since the Civil Rights Act of 1964—the Americans with Disabilities Act. 42 U.S.C. § 12101(a)(1) (emphasis added). The ADA was created to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). Title II of the ADA specifically ensures that no individual with a disability will be excluded or discriminated against by a public entity. 42 U.S.C. § 12132.

To achieve the full elimination of discrimination against individuals with disabilities by public entities, Congress entrusted the Attorney General of the United States to promulgate regulations to enforce Title II of the ADA. 28 C.F.R. § 35.130(d). The Attorney General in turn created the "integration mandate," requiring that public entities "shall administer services, programs, and activities in the most integrated setting appropriate" for individuals with disabilities. 28 C.F.R. § 35.130(d). Public entities are now required to reasonably modify their policies, practices, and procedures to prevent the exclusion and segregation of individuals with disabilities. 28 C.F.R. § 35.130(d).

After the integration mandate was issued, this Court decided in *Olmstead v. L.C.* that the Attorney General's integration mandate requires states to provide community-based treatment to individuals, ensuring they are not unnecessarily segregated in institutions. *Olmstead v. L.C. by Zimring*, 527 U.S. 581, 592 (1999). Following Olmstead, the Department of Justice issued a comprehensive guidance document to address ongoing implementation challenges with the ADA's integration mandate. United States Department of Justice, *Statement of the Department of Justice on the Integration Mandate of Title II of the ADA and Olmstead v. L.C.*. The DOJ clearly stated

that the ADA and *Olmstead* extend to those "at serious risk of institutionalization or segregation and are not limited to individuals currently in institutional or other segregated settings". *Id*. The DOJ created this technical assistance guide, commonly referred to as the "guidance document," to help individuals understand their rights and assist state and local governments in fulfilling their legal obligations. *Id*. The guidance reflects the DOJ's commitment to vigorous enforcement and provides detailed answers on key concepts within the enforcement of the ADA *Id*.

II. NATURE OF PROCEEDINGS

The District Court. Ms. Kilborn, Ms. Torrisi, and Mr. Williamson sued for injunctive relief under Title II of the ADA to ensure that community-based resources are available should they require medical assistance in the future. R. at 11-12. Shortly after, the United States filed to intervene, seeking injunctive relief for all those in Franklin at risk of unnecessary institutionalization and segregation. R. at 24.

The District Court for the District of Franklin granted the United States' motion to intervene as of right under Federal Rule of Civil Procedure 24(a)(2). R. at 9. Then, the parties filed cross-motions for summary judgment on whether Title II of the ADA protects those who are at risk of future segregation but not currently institutionalized. R. at 24. The district court ultimately found that all individuals at risk of future segregation are protected under the ADA, regardless of whether they are currently institutionalized. R. at 24. The district court then held a bench trial finding that Ms. Kilborn, Ms. Torrisi, and Mr. Williamson were at risk of future institutionalization and segregation following the testimony of nineteen witnesses, including medical experts and State agency employees. R. at 24. Based on this finding, the district court granted injunctive relief, ordering that Franklin: (1) submit a proposed plan from Franklin of how to correct its violation

and (2) guarantee that Ms. Kilborn, Ms. Torrisi, and Mr. Williamson would not suffer from any further unnecessary institutionalization. R. at 24.

Twelfth Circuit Court of Appeals. Franklin appealed to the Twelfth Circuit Court of Appeals on whether: (1) the United States has an interest in the subject matter of this ADA dispute, allowing it to intervene as of right under Federal Rule of Civil Procedure 24(a)(2); and (2) whether someone at risk but not currently institutionalized has standing for a Title II claim. R. at 23. The Twelfth Circuit found, using the abuse of discretion standard, that the United States met all four of the elements of Rule 24(a)(2), specifically, that the United States statutorily has an enforcement interest. It also found that the Department of Justice's guidance document was due deference and upheld the district court's findings. R. at 29.

SUMMARY OF THE ARGUMENT

This Court should affirm the judgment of the Twelfth Circuit Court of Appeals. The court of appeals correctly interpreted the ADA to include persons at risk of segregation. The court of appeals also properly permitted the United States to intervene as a party under Rule 24(a)(2).

I.

The court of appeals correctly recognized that the Department of Justice's guidance document merits *Auer* deference. Title II of the ADA protects those at serious risk of institutionalization or segregation. The integration mandate creates ambiguity because it does not specify the temporal scope of the regulation. Instead, it simply requires that public entities "administer" individuals with disabilities in the most integrated setting suitable for their needs. The word "administer" in this regulation can be interpreted as being forward-looking toward systematic planning of resources aimed at preventing discrimination before it occurs, as the DOJ

has stated in their guidance document. Yet reasonable minds may disagree on whether that language applies only to those individuals currently institutionalized and the public entities' duty to them, or if it also applies to prospective duties to prevent discrimination.

The guidance document is reasonable. The DOJ has consistently maintained its understanding of Congress's intent behind drafting the ADA. The guideline clarifies the ambiguity in the integration mandate by specifying that "administer" is interpreted to mean a proactive approach to fighting discrimination rather than a retroactive one. Franklin's narrow interpretation requiring institutionalization would defeat the overall purpose of the ADA and its related regulations: to protect individuals with disabilities from discrimination.

The DOJ's interpretation of ADA requirements relies on decades of enforcement experience and their institutional knowledge of how civil rights protections operate. As the agency designated by Congress to regulate the ADA, it has a unique perspective and understanding of the practical effects these regulations will have on the system they aim to support. This guidance document reflects that expertise and acknowledges that institutionalization may be an irreversible harm that negates the protections of the ADA and *Olmstead's* promise.

The court of appeals correctly determined that Ms. Kilborn, Ms. Torrisi, and Mr. Williamson were at risk of institutionalization and can bring a claim under Title II of the ADA to challenge Franklin's lack of community mental health facilities in direct violation of the integration mandate and, by extension, the ADA. The lower courts correctly found that because the integration mandate is ambiguous, the DOJ's guidance document should get deference, and it

shows individuals at risk of segregation in an institution are eligible to bring a claim under Title II of the ADA.

II.

The court of appeals correctly recognized that Congress authorized the United States to enforce Title II of the ADA and that this authority creates substantial federal interests warranting intervention as of right under Federal Rule of Civil Procedure 24(a)(2). This case presents a fundamental question about whether America's premier civil rights law protecting disabled citizens will receive the strong federal enforcement that Congress intended, or whether it will be relegated to a system of piecemeal private litigation incapable of achieving the comprehensive reform necessary to eliminate institutional discrimination.

Congress declared that the United States plays "a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities." 42 U.S.C. § 12101(b)(1). This was no mere aspirational statement but a deliberate constitutional choice rooted in the lessons of the civil rights movement: meaningful equality requires sustained federal leadership and institutional reform. When Congress incorporated the enforcement mechanisms of Title VI of the Civil Rights Act, it adopted the entire body of established judicial interpretations recognizing federal enforcement authority. The phrase "any other means authorized by law" in Title VI had been consistently interpreted by federal courts for decades to include judicial enforcement actions by the United States. 42 U.S.C 2000d-1.

The United States has distinct sovereign interests that no private party can adequately represent. Federal enforcement brings institutional expertise developed across decades of civil rights enforcement, the capacity for comprehensive remedial design that addresses systemic causes rather than individual symptoms, and the authority to create uniform compliance standards. Private

parties typically seek accommodation of their circumstances, while federal enforcement focuses on systemic compliance that prevents discrimination against entire classes of disabled individuals. The United States seeks broader relief than private plaintiffs, including system-wide reforms that will help all at-risk individuals rather than merely individual accommodations.

Federal enforcement authority implements Congress's Section 5 power to enforce the Fourteenth Amendment's equal protection guarantee, providing prophylactic protection against constitutional violations that might otherwise escape remedy. Rather than forcing duplicative litigation with parallel proceedings and potentially conflicting remedies, intervention allows coordinated resolution of all related compliance issues in a single comprehensive proceeding. This approach reduces litigation costs while ensuring the structural reform necessary to protect all similarly situated individuals throughout the jurisdiction.

The promises of equal citizenship and community integration that Congress embedded in the ADA cannot be fulfilled through private litigation alone. Only federal enforcement has the scope, authority, and resources necessary to achieve the systematic transformation that Congress envisioned when it declared the ADA would serve as a comprehensive mandate for eliminating discrimination against Americans with disabilities. This Court should affirm the judgment below and confirm that federal enforcement remains available to protect the rights of all individuals whom state systems place at risk of unnecessary institutionalization.

ARGUMENT AND AUTHORITIES

Standard of Review. The first issue before this Court considers whether a person not currently institutionalized but at risk of unnecessary segregation can maintain a claim under Title II of the ADA. Statutory jurisdiction is a question of law and this Court reviews legal conclusions de novo. *United States v. Mississippi*, 82 F.4th 387, 391 (2023). Additionally, courts will review

motions for summary judgments de novo. *Troutman v. Louisville Metro Dep't of Corr.*, 979 F.3d 472, 481 (6th Cir. 2020).

The second issue before the court is the United States' right to intervene. The standard of review for Rule 24(a)(2) intervention has yet to be decided by this Court, but it should be an abuse of discretion.

I. THE COURT OF APPEALS AFFORDED THE PROPER DEFERENCE TO THE DEPARTMENT OF JUSTICE'S GUIDANCE DOCUMENT AND HELD THAT THE AMERICANS WITH DISABILITIES ACT APPLIES TO INDIVIDUALS AT SERIOUS RISK OF INSTITUTIONALIZATION OR SEGREGATION.

Sarah Kilborn spent years of her life confined in a state hospital. R. at 13. The reason she was not approved for community-based treatment by her doctor was that her state did not have the appropriate community mental health facility within a reasonable distance of her home. R. at 13. Eliza Torrisi similarly spent months longer than was medically necessary in a hospital, despite her doctor recommending transfer to a community mental health facility that could provide her with inpatient care. R. at 14. The State of Franklin eliminated the program that would have provided this care for budgetary reasons. R. at 14. Malik Williamson was forced to remain in a state hospital, despite his doctor recommending him for a community-based treatment, because the only state-run community mental health facility was too far from his support system and offered no inpatient care. R. at 15. All three individuals suffered the same unnecessary segregation that the Americans with Disabilities Act is designed to protect against. Franklin's decision to shutter community mental health facilities for budgetary reasons created systemic barriers that disproportionately affect those with disabilities, forcing them to be segregated in strict hospital settings as opposed to a more community-based program.

Experiences like those of Ms. Kilborn, Ms. Torrisi, and Mr. Williamson shows why the Department of Justice created its guidance document. Working within its expertise as the agency designated to provide regulations for the ADA, the DOJ reasonably instructed that this type of segregation is discriminatory. United States Department of Justice, *Statement of the Department of Justice on the Integration Mandate of Title II of the ADA and Olmstead v. L.C.*, https://archive.ada.gov/olmstead/q&a_olmstead.htm (last updated Feb. 25, 2020). This regulatory interpretation is entitled to the deference afforded in *Auer v. Robbins*, 519 U.S. 452 (1997), and *Kisor v. Wilkie*, 588 U.S. 558 (2019).[1] Federal agencies receive deference when they reasonably interpret their own genuinely ambiguous regulations, and that principle governs this case. *Auer v. Robbins*, 519 U.S. 452, 461 (1997); *Kisor v. Wilkie*, 588 U.S. 558, 561 (2019). To receive *Auer* deference, the regulation must be genuinely ambiguous, the agency's interpretation must be reasonable, and the interpretation must reflect the agency's authoritative position implicating the agency's expertise and reflect the agency's fair and considered judgment. *Kisor*, 588 U.S. at 573-579. All these requirements are satisfied here. Congress specifically empowered the DOJ to play the central role in enforcing the standards set forth by the ADA and creating regulations to further its goals. *See* 42 U.S.C. § 12101(b)(3); 42 U.S.C. § 12134(a). The guidance document set forth by the DOJ was created with the agency's experience as the enforcement power behind the ADA and sets forth the goals designated by Congress and this Court in *Olmstead*. *See generally* United States

[1] As the Twelfth Court of Appeals points out, the appropriate analysis for whether an agency's interpretation of its own regulation is entitled to deference is *Auer*, not *Skidmore*. R. at 29. *Skidmore* deference is inapplicable under the circumstances presented in this case because the DOJ guidance document interprets the agencies own regulation rather than a statute. *Skidmore v. Swift & Co.,* 323 U.S. 134, 140 (1944) (providing a flexible form of deference based on factors such as the thoroughness of the agencies consideration, the validity of its reasoning, and its consistency over time to agency interpretations of statutes without clear interpretive authority). *Skidmore* is simply the wrong framework when an agency is interpreting regulations within its own delegated authority and area of expertise.

Department of Justice, *Statement of the Department of Justice on the Integration Mandate of Title II of the ADA and Olmstead v. L.C*; *see Olmstead,* 527 U.S. 581 (1999).

This Court should affirm the lower court's holding because it correctly applied the current settled principles of administrative law as laid out in *Kisor* and *Auer*, affording deference to the Department of Justice's interpretation of its own regulation. The alternative would require individuals with disabilities to endure institutionalization to challenge the barriers they face unnecessarily. This would undermine the ADA's uprise, this Court's precedent, and the function of the DOJ as an executor of Congress's will.

A. Although Title II created a clear and comprehensive mandate that broadly applied to eliminate discrimination against individuals with disabilities, the integration mandate is ambiguous.

The first requirement to afford deference is that the regulation must be genuinely ambiguous. *Kisor*, 588 U.S. at 573. Here, as the court of appeals pointed out in its opinion, the ADA and the integration mandate are both genuinely ambiguous, warranting deference to the DOJ's guidance document. R. at 29. The ADA requires that individuals with disabilities should generally not be discriminated against. 42 U.S.C. § 12132. Expanding upon that protection, the integration mandate requires public entities to provide services and programs to individuals with qualified disabilities in the most integrated setting appropriate. 28 C.F.R. § 35.130(d). The integration mandate fails to specify whether this duty applies prospectively, to individuals who would suffer segregation but are not currently institutionalized, or retroactively, requiring an individual to have been segregated unlawfully. Here is where the ambiguity lies. This textual ambiguity has led to a 6-1 circuit split,

placing the integration mandate in the "zone of ambiguity" outlined in *Kisor*. R. at 29. *See also Kisor*, 588 U.S. at 576.

This court in *Kisor* directed that, first and foremost, a determination must be made regarding whether the regulation is genuinely ambiguous. *Kisor* 588 U.S. at 574. If there is no uncertainty in the meaning of the regulation, then the law provides an answer, and any interpretive material is unnecessary. *Id*., at 575. To make this interpretation, the court must consider the "text, structure, history, and purpose of [the] regulation." *Id*. When a dispute arises over interpretation, courts typically start with the text. *Rodriguez v. Branch Banking & Tr. Co.,* 46 F.4th 1247, 1254 (11th Cir. 2022). The text of the integration mandate requires that the state "administer" the "most integrated setting appropriate." 28 C.F.R. § 35.130(d). The word "setting," for example, can refer to a specific place, such as a facility, or to an environment or situation. *Steimel v. Wernert*, 823 F.3d 902, 912 (7th Cir. 2016). Neither the integration mandate nor the ADA defines what "setting" means within the ADA or its regulations. *Id*. Similarly, the word "administer" can have multiple meanings. Merriam-Webster defines "administer" as to manage or support, to provide or apply, or to give officially. Merriam-Webster.com Dictionary, "Administer," https://www.merriamwebster.com/dictionary/administer (last visited Sept. 8, 2025). Courts have analyzed what accommodations under the ADA require, as the terms used can be interpreted differently. *See generally Enyart v. Nat'l Conf. of Bar Exam'rs, Inc*., 630 F.3d 1153, 1163-64 (9th Cir. 2011) (analyzing the requirements to administer test in compliance with the ADA).

A method to show text in a regulation is ambiguous is if there is more than one reasonable interpretation of the regulation. *United States v. McIntosh*, 124 F.4th 199, 206-07 (3d Cir. 2024). The text of the integration mandate is ambiguous because it can, and has been, interpreted differently. *Compare Steimel v. Wernert*, 823 F.3d 902 (7th Cir. 2016) (interpreting the mandate

to find isolation in one's own home can violate the ADA if services that promote community integration are withheld); with *United States v. Mississippi*, 82 F.4th 387, 391 (5th Cir. 2023) (concluding that the lack of resources is not violation of the ADA because integration mandate does not cover "at risk" individuals). This variation in application suggests that the wording of the interpretation is ambiguous. Nothing in the plain text of the integration mandate states that institutionalization is necessary; instead, the language leaves room for interpretation regarding what is the most integrated setting and how that setting should be managed.

The structure of the integration mandate also reveals the ambiguity of the regulations. The General Prohibitions Against Discrimination, 28 C.F.R. § 35.130, encompass a wide range of forms of discrimination, not just unnecessary segregation. Other subsections within the section include explanations or clauses that clarify their intent. *Id.* For example, subsection b of 28 C.F.R § 35.130 outlines the ways public entities are prohibited from denying services to persons with disabilities. 28 C.F.R. § 35.130(b). In contrast, subsection d merely instructs public entities to provide the most integrated setting possible without further clarification. 28 C.F.R. § 35.130(d). Some parts of the regulation specify that public entities must revise their policies to prevent discrimination, showing a proactive approach to combating it. 28 C.F.R. § 35.130(b)(7)(i). Other sections describe a more proactive strategy when discrimination is already occurring. 28 C.F.R. § 35.130(h). Considering the structure of the regulation, it is unclear whether it is intended only to regulate current actions or also to address potential or future discrimination. 28 C.F.R. § 35.130.

The purpose of the ADA is to provide equal opportunities for persons with disabilities. *Berardelli v. Allied Servs. Inst. of Rehab. Med.,* 900 F.3d 104, 115 (3d Cir. 2018). The ADA evolved from Congress's concern about the danger of "benign neglect" and the "invisibility" of the disabled. *Helen L. v. DiDario*, 46 F.3d 325, 335 (3d Cir. 1995). In the House Report related to

the ADA, Congress pointed out that, unlike other titles in the act, Title II does not specify all the forms of discrimination that a person with disabilities may experience. *Id.*, at 332 (citing H.R. Rep. No. 485 (III), 101st Cong., 2d Sess., 52 (1990)). Congress empowered the DOJ to issue regulations when needed. To clarify the integration mandate, the DOJ did just that by releasing its guidance document.

The text, structure, history, and purpose show the integration mandate is at the very least within the zone of ambiguity. *See Kisor*, 588 U.S. at 577.

B. The Department of Justice's interpretation of the integration mandate is reasonable.

The second requirement to afford deference is that the agency's interpretation must be reasonable. *Kisor*, 588 U.S. at 575-76. The DOJ's interpretation of the integration mandate is reasonable and, as a result, should warrant deference. *Id*. The DOJ's interpretation reflects a natural reading of the regulatory language that imposes ongoing administrative obligations to public entities, not a stagnant duty that begins and ends. Title II does not textually require institutionalization as a prerequisite for coverage. 42 U.S.C. § 12132. When Congress empowered the Attorney General to promulgate regulations related to the protections of the ADA, it authorized interpretations to give practical meanings to the ADA's purpose. R. at 17. Further, the DOJ's guidance document, released following this Court's decision in *Olmstead*, clarifies the ambiguity present in the integration mandate. R. at 20. The DOJ's guidance document creates a workable standard that applies the integration mandate's requirements and this Court's holding in *Olmstead* to extend those protections to those at risk of institutionalization. United States Department of Justice, *Statement of the Department of Justice on the Integration Mandate of Title II of the ADA and Olmstead v. L.C*.

Title II of the ADA broadly states that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. This language does not require institutionalization as a condition for protection. Instead, the law prohibits discrimination against any "qualified individual with a disability," regardless of whether that person is already institutionalized. *Id.* Similarly, the integration mandate does not explicitly require a person to be actively institutionalized to be protected under both the integration mandate and the ADA. *See generally id.* The Attorney General's regulation implementing Title II clarifies this, requiring public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d). As the Ninth Circuit has acknowledged, nothing "in the plain language of the mandate or *Olmstead* requires institutionalization as a prerequisite to coverage." *M.R. v. Dreyfus*, 697 F.3d 706, 733 (9th Cir. 2012). Since the regulation does not specify the extent of its coverage—whether it includes individuals at risk of institutionalization—the DOJ reasonably interprets it to include such individuals. R. at 19-20. Because this interpretation is reasonable, it is entitled to deference under *Auer*. *Kisor*, 588 U.S. at 575-76.

1. The Department of Justice's interpretation is consistent with *Olmstead's* recognition that unnecessary institutionalization for a person with a disability is discrimination prohibited by the Americans with Disabilities Act.

In *Olmstead v. L.C. by Zimring*, this Court held that the ADA prohibits unjustified segregation of individuals with disabilities, recognizing that unnecessary institutionalization is itself a form of discrimination. *Olmstead,* 527 U.S. 581, 600–01 (1999). The plaintiffs in *Olmstead* were individuals with mental disabilities who were voluntarily admitted to a state hospital where

they were confined in a psychiatric unit. *Id*., at 587. The two patients were forced to stay in the psychiatric unit of the hospital despite their physicians' community-based programs would be more appropriate. *Id*. The state argued that this was not due to discrimination, but because it lacked the funds to operate a community-based facility. *Id*. This Court in *Olmstead* relied on the DOJ's understanding of discrimination to determine that undue institutionalization is prohibited by the ADA and the integration mandate as discrimination. *Id*. This Court recognized that "Congress had a more comprehensive view of the concept of discrimination advanced in the ADA." *Id*.

The DOJ's guidance document aligns with *Olmstead*'s fundamental recognition that unnecessary segregation is harmful to those with disabilities and diminishes their capacity for community participation. The holding of *Olmstead* rested on the principle that isolating people with disabilities reinforces harmful ideas, viewing those individuals as "unworthy" of participating in their community. *Id*. This alignment shows the reasonableness of the DOJ's interpretation of the integration mandate.

Multiple circuits have relied on this same principle to conclude that individuals need not already be institutionalized to bring a claim under Title II. *See*, e.g., *Davis v. Shah*, 821 F.3d 231, 262 (2d Cir. 2016), *Pashby v. Delia*, 709 F.3d 307, 322–23 (4th Cir. 2013), *Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175, 1181–82 (10th Cir. 2003). The DOJ's interpretation carries *Olmstead* to its logical conclusion: a state policy that creates a significant risk of unjustified institutionalization is discriminatory in the same way as actual segregation. *Pashby*, 709 F.3d at 322 (recognizing that persons who would have to be institutionalized to receive the services have standing to bring an ADA claim, even if not actively institutionalized); *Fisher*, 335 F.3d at 1181

(finding that nothing in plain language of regulation limits protection afforded by the ADA or the integration mandate to persons currently institutionalized). This overwhelming judicial acceptance shows the reasonableness of the DOJ's interpretation. Additionally, when determining whose reasonable interpretation controls, courts look to who Congress intended to have interpretative power. *Kisor*, 588 U.S. at 578. Here, Congress delegated that power to the DOJ, meaning that their understanding of the regulation is within that interpretive power discussed in *Kisor*. *See Olmstead,* 527 U.S. at 597-98 .

2. The Department of Justice's integration mandate aligns with Article III standing requirements.

Recognizing at-risk claims under Title II aligns with the Article III standing doctrine. Within the standing doctrine, a plaintiff can show standing, despite not currently being harmed, if there is a "substantial risk" that harm will occur. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). Federal courts often allow plaintiffs to challenge policies that pose a serious risk of injury before the injury occurs. *See Steimel*, 823 F.3d at 914 (holding that plaintiffs had standing where reductions in community services put them at risk of institutionalization). Requiring courts to assess whether someone is genuinely "at risk" of institutionalization aligns with the standing inquiry and supports this interpretation as reasonable. *M.R. v. Dreyfus*, 697 F.3d at 735 (finding that plaintiffs showed elimination of services enabling them to stay in the community was sufficient to show they were at risk and bring claim). Under Article III judicial standing, plaintiffs do not have to face actual harm to bring a claim for protection. Forcing individuals with disabilities to experience actual segregation before seeking relief would conflict with Article III's preventive purpose and expose plaintiffs to needless irreparable harm. *See id.*

3. The Americans with Disabilities Act protections would lose all practical meaning if potential plaintiffs had to experience institutional discrimination firsthand as a prerequisite for challenging discriminatory policies in court.

Requiring individuals to experience institutionalization firsthand would render Title II's protections hollow. *Id.* at 733. ("[I]nstitutionalization is not only deeply injurious but often irreversible."). Congress enacted the ADA to eliminate discrimination before it occurs, not merely to remedy it after the fact. 42 U.S.C. § 12101(a)(2), (5). All three plaintiffs would be at risk of unnecessary institutionalization in the future. Each plaintiff has spent several years of their lives institutionalized. R. 12-15. Ms. Kilborn was admitted and re-admitted three times to an inpatient facility at Southern Franklin Regional Hospital. R 12-14. Ms. Kilborn was forced to be institutionalized despite her doctor determining she would benefit from a community mental health facility during her second admission. R. at 13. Ms. Kilborn suffers from bipolar disorder, a mental health disorder that causes severe depressive episodes despite medication. R. at 12. Because there is not a state-run community mental health care facility near her, when—not if—Ms. Kilborn requires accommodations for her disability, she will be forced to become segregated and institutionalized. R. at 13. Examining this Court's reasoning in *Olmstead*, along with the DOJ's interpretations of the ADA through its regulations and guidance documents, Franklin violated the ADA. R. 19-20. The same can be said for Ms. Torrisi and Mr. Williamson. R. at 14.

Interpreting the integration mandate to cover only those already institutionalized would contravene Congress's purpose and allow states to adopt discriminatory policies with impunity until individuals are forcibly segregated. This outcome would contravene both the text and spirit of the ADA.

C. The character and context of the Department of Justice's interpretation entitle it to controlling weight.

The final requirement as to whether an agency's interpretation deserves controlling weight is whether the interpretation represents the agency's authoritative stance, shows its substantive expertise, and embodies the agency's fair and well-reasoned judgment. *Kisor*, 588 U.S. at 575-578. This knowledge should be rooted in the agency's history of authority or its scope of duties assigned by Congress. *Id*. Here, the guidance document issued by the DOJ meets each of these rigorous criteria. Congress designated the DOJ as the agency responsible for issuing regulations to promote the purpose of the ADA. 42 U.S.C. § 12134. The DOJ has enacted many regulations within its regulatory authority related to the ADA. *See* 28 C.F.R. § 35.130 (generally prohibits public entities from discriminating against individuals with disabilities); 28 C.F.R. § 36.203 (lays out public requirements to accommodate individuals with disabilities). The DOJ's interpretation has remained consistent over time and has not been affected by changes in administration—reaffirming the document's authority. This consistency shows the institutional expertise required under *Kisor* to merit deference. *Kisor*, 588 U.S. at 578.

Additionally, creating and promoting regulations related to the ADA falls within the DOJ's expertise. No other federal agency has more extensive institutional knowledge about disability and civil rights regulations than the DOJ. The court in *Olmstead* pointed out that the DOJ is the agency with the "body of expertise" that courts can consult for guidance on ADA matters like the one before this Court. 527 U.S. 587. The DOJ's interpretation of the integration mandate, as outlined in the guidance document, aligns with Title II of the ADA, the integration mandate itself, and this court's precedent in *Olmstead*. R. at 19. This guidance document has been used in many cases to help courts interpret the ADA. Elena Cohen, *Lawyering as a Public Health Tool: Enforcing Title*

II of the Americans with Disabilities Act with Preventive Litigation, 93 Fordham L. Rev. 1427, 1447-48 (2025). The interpretation reflects the DOJ's fair and thoughtful judgment, based on years of experience in disability services litigation. *Id*. This guidance was not created quickly; their understanding of the integration mandate developed in 2011, years after the mandate was established and more than a decade after this court's decision in *Olmstead*. *Id*.

This Court should affirm the court of appeals' decision because the DOJ's interpretation exemplifies precisely the authoritative, expert agency judgment that deserves controlling deference under *Kisor* and *Auer*. The interpretation is based on the agency responsible for enforcing the ADA and promoting its purpose over the years. Rejecting this interpretation would weaken not only the ADA's purpose but also the broader principle that agencies charged with advancing Congress's intent in statutes like this should be respected.

II. THE UNITED STATES HAS AN INTEREST RELATING TO THE SUBJECT MATTER OF A PRIVATE AMERICANS WITH DISABILITIES ACTION UNDER FEDERAL RULE OF CIVIL PROCEDURE 24(A)(2).

When Congress enacted Title II of the Americans with Disabilities Act, it explicitly declared that the United States plays "a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities." 42 U.S.C. § 12101(b)(1). This directive, combined with Congress's deliberate incorporation of Civil Rights Act enforcement mechanisms, establishes clear federal authority to sue enforcing Title II and creates a protectable sovereign interest in ensuring uniform compliance with federal disability rights laws. The present case exemplifies precisely why such federal enforcement authority is essential: Ms. Kilborn, Ms. Torrisi, and Mr. Williamson represent countless Americans with disabilities trapped by systemic state failures that create substantial risk of unnecessary institutionalization, yet individual plaintiffs lack the resources and scope necessary to remedy the structural discrimination that affects entire

populations. Franklin operates only one community mental health facility for over 600,000 residents, located hours from most citizens' homes and lacking essential services—a pattern of deliberate indifference that violates the ADA's integration mandate and places thousands at risk of unjustified institutional segregation. R. at 15. The United States' intervention serves the core purposes of Federal Rule of Civil Procedure 24(a)(2): protecting federal interests in uniform law enforcement, ensuring adequate representation for all affected individuals, and promoting judicial efficiency through comprehensive systemic relief rather than piecemeal litigation. Monica Haymond, *Intervention and Universal Remedies*, 91 U. Chi. L. Rev. 1859, 1865 (2024).

In addition to finding that the United States met the requirements to intervene under Rule 24(a)(2)[2], the lower courts correctly upheld a principle of disability rights law. R. at 9; R. at 28. The lower courts found that the United States may seek judicial relief and has an established protectable interest in ensuring uniform compliance with federal disability rights laws. R. at 7; R. at 27-28. They recognized Congress's intentions for United States enforcement from first, its deliberate incorporation of Civil Rights Act enforcement mechanisms into Title II, and second, its express declaration of federal enforcement leadership. R. at 8-9.

This case presents no mere technical dispute over procedural rules, but rather a defining moment for the promise of equal citizenship that underlies America's civil rights laws. Franklin's interpretation would create a separate and unequal system where Americans with disabilities must suffer institutional segregation before claiming legal protection—a regime that perpetuates the

[2] Intervention as of right under Rule 24(a)(2) requires that four elements be met: "(1) timely application; (2) an interest relating to the subject matter of the action; (3) potential impairment, as a practical matter, of that interest by disposition of the action; and (4) lack of adequate representation of the interest by the existing parties to the action." *Illinois v. City of Chi.*, 912 F.3d 979, 984 (7th Cir. 2019). Both lower courts found the United States' application to be timely. R. at 5; R. at 26-27. As the certified question presented is concerning the United States' interest, the scope of this brief will be limited to elements (2), (3), and (4). R. at 39.

very "unwarranted assumptions" about their capabilities that the ADA was designed to eliminate. This Court should affirm the lower courts' judgment, ensuring that the ADA fulfills its intended role as comprehensive civil rights legislation that prevents discrimination rather than merely responding to it after irreparable harm occurs, while confirming that federal enforcement remains available to protect the rights of all individuals whom state systems place at risk of unnecessary institutionalization.

A. The standard of review for Rule 24(a)(2) intervention is abuse of discretion because lower court discretion aligns with intervention's history and purpose of equity and efficiency, as well as its facts intensive analysis.

In the federal courts' ongoing effort to balance judicial efficiency with meaningful access to justice, few procedural questions carry greater practical significance than the standard of review governing intervention as of right under Federal Rule of Civil Procedure 24(a)(2). This case presents a question about the proper allocation of judicial authority between appellate courts conducting searching de novo review of district court intervention decisions and trial judges exercising the discretionary latitude that has historically defined equity-based determinations. Peter A. Appel, *Intervention in Public Law Litigation: The Environmental Paradigm*, 78 Wash. U. L. Q. 215, 305 (2020). The current circuit split reflects a deeper philosophical divide about the nature of intervention itself. Those circuits applying de novo review[3] treat intervention as a purely legal determination, divorced from the contextual realities that make each case unique, while

[3] *See, e.g., Sierra Club v. City of San Antonio*, 115 F.3d 311, 314 (5th Cir. 1997); *United States v. Michigan*, 68 F.4th 1021, 1024 (6th Cir. 2023); *Boat v. Ill. State Bd. of Elections*, 75 F.4th 682, 686 (7th Cir. 2023); *United States v. Union Elec. Co.*, 64 F.3d 1152, 1158 (8th Cir. 1995); *Smith v. L.A. Unified Sch. Dist.*, 830 F.3d 843, 853 (9th Cir. 2016); *Kane Cty. v. United States*, 928 F.3d 877, 889 (10th Cir. 2019); *Meek v. Metropolitan Dade County*, 985 F.2d 1471, 1477 (11th Cir. 1993).

circuits applying abuse of discretion review[4] recognize intervention's irreducibly factual character and equitable origins. *Id.*

The answer lies in intervention's historical foundation and practical operation within our federal system. Rule 24(a)(2) represents the modern embodiment of centuries-old equitable principles that have always vested trial courts with discretionary authority to protect those who would otherwise lack a voice in proceedings affecting their rights. *Id.* From its origins in nineteenth-century admiralty practice through the 1966 Advisory Committee's deliberate expansion to serve efficiency and fairness, intervention has required the individualized, fact-intensive assessment weighing timeliness, adequacy of representation, and practical case management concerns that district courts are uniquely positioned to provide. *Id.*, at 254. The abuse of discretion standard properly recognizes that intervention sits at the intersection of law and equity, requiring the contextual judgment that has always been the province of trial courts and ensuring that the careful balance between access and efficiency that lies at the heart of Rule 24(a)(2) is preserved through respectful deference to district court expertise rather than the searching appellate second-guessing that de novo review would impose.

1. The historical foundation of intervention demands discretionary review.

The question of appellate review standards cannot be divorced from the historical wellspring from which modern intervention flows. Peter A. Appel, *Intervention in Public Law Litigation: The Environmental Paradigm*, 78 Wash. U. L. Q. 215, 305 (2020). Rule 24(a)(2) intervention represents not a novel procedural innovation, but the direct descendant of centuries-

[4] *See, e.g., Int'l Paper Co. v. Town of Jay, Me.,* 887 F.2d 338, 344 (1st Cir. 1989); *United States v. Hooker Chems. & Plastics Corp.*, 749 F.2d 968, 990-991 (2d Cir. 1984); *Harris v. Pernsley*, 820 F.2d 592, 597 (3d Cir. 1987); *In re Sierra Club*, 945 F.2d 776, 779 (4th Cir. 1991).

old equitable principles that have always vested trial courts with broad discretionary authority to protect the interests of those who would otherwise lack a voice in proceedings affecting their rights. Caleb Nelson, *Intervention*, 106 Va. L. Rev. 271, 305-06 (2020).

Intervention's roots run deep in the fertile soil of nineteenth-century admiralty and equity practice, where outside parties facing the specter of binding judgments could seek judicial protection through discretionary relief. *Id.*, at 301. This Court's 1912 Equity Rules crystallized this tradition, providing that "[a]nyone claiming an interest in the litigation may at any time be permitted to assert his right by intervention." *Id.*, at 307. This permissive language—"may at any time be permitted"—reflects the inherently discretionary character that has defined intervention from its earliest iterations. *Id.*

When the Advisory Committee crafted Rule 24(a)(2) in 1937, it consciously built on this equitable foundation, allowing intervention as of right for parties "who could be bound by the judgment when the existing representation is or may be inadequate." Katharine Goepp, *Note: Presumed Represented: Analyzing Intervention as of Right When the Government is a Party*, 24 W. New Eng. L. Rev. 131, 133 (2002). The 1966 amendments, far from abandoning this discretionary heritage, expanded it in service of practical efficiency. Peter A. Appel, *Intervention in Public Law Litigation: The Environmental Paradigm*, 78 Wash. U. L. Q. at 254.

This Court has consistently recognized that procedures rooted in equity merit discretionary review. *Id.*, at 305. Equity-based judgments require the kind of contextual assessment that trial courts are uniquely positioned to provide. *Id.* Intervention, with its deep equitable roots and practical focus on protecting interests while promoting efficiency, fits squarely within this established framework.

2. The fact-intensive nature of intervention analysis demands district court primacy.

Intervention determinations under Rule 24(a)(2) are not abstract legal propositions susceptible to appellate second-guessing, but practical assessments that turn on case-specific factual circumstances that only district courts can adequately evaluate. Each element of the intervention analysis—timeliness, interest, impairment, and adequacy of representation—requires particularized factual inquiry that this Court has repeatedly identified as the hallmark of discretionary review. Fed. R. of Civ. P. 24(a)(2); *NAACP v. New York*, 413 U.S. 345, 366 (1973).

Consider timeliness, which this Court in *NAACP v. New York* explicitly subjected to abuse of discretion review. *NAACP*, 413 U.S. at 366. As the Court explained, "timeliness is to be determined from all the circumstances" and "is to be determined by the court in the exercise of its sound discretion." *Id.*, at 365-366. The factual complexity inherent in timeliness determinations—requiring courts to weigh the proposed intervenor's knowledge, the prejudice to existing parties, the stage of proceedings, and any unusual circumstances—exemplifies why discretionary review is not merely appropriate but essential. *Id.*, at 366-68.

The interest in the subject matter of the action inquiry presents an even starker illustration of intervention's fact-intensive character. *Brody v. Sprang*, 957 F.2d 1108, 1117 (3d Cir. 1992). In *Brody v. Sprang*, the Third Circuit was forced to remand because "the factual record was barren" regarding the "critical facts" necessary to determine whether existing parties adequately represented the proposed intervenor's interests. *Id.*, at 1120. This determination requires district courts to assess the subtle dynamics of party relationships, the alignment of interests, and the practical realities of litigation strategy—assessments that appellate courts, viewing the intervention question in a vacuum, are ill-equipped to make. Determining whether a proposed

intervenor has a sufficient interest "relating to the property or transaction which is the subject of the action" requires intimate familiarity with the specific factual circumstances of each case. Fed. R. of Civ. P. 24(a)(2). District courts must assess not just the legal sufficiency of claimed interests, but their practical significance within the broader litigation context.

3. Efficiency and judicial administration support discretionary review.

The Advisory Committee's 1966 amendments reveal intervention's dual function: protecting individual interests while promoting judicial efficiency through consolidated proceedings. Peter A. Appel, *Intervention in Public Law Litigation: The Environmental Paradigm*, 78 Wash. U. L. Q. at 254. This efficiency rationale provides powerful support for abuse of discretion review, which recognizes district courts' superior institutional position to balance these competing concerns. District courts have unparalleled insight into the practical implications of intervention decisions. They understand the current procedural posture, the complexity of discovery, the likelihood of settlement, and the administrative burden of adding new parties. The efficiency inquiry depends on case-specific circumstances that resist appellate generalization. The Advisory Committee Note's recognition that intervention "may be subject to appropriate conditions or restrictions" to ensure "efficient conduct of the proceedings" reflects the inherently contextual nature of these determinations. Edward J. Brunet, *A Study in the Allocation of Scarce Judicial Resources: The Efficiency of Federal Intervention Criteria*, 12 Ga. L. Rev. 701, 744 (1978).

De novo review would undermine this efficiency-promoting function by encouraging unnecessary appeals and second-guessing decisions that trial courts are far better positioned to make. De novo review creates perverse systemic incentives. Parties dissatisfied with intervention rulings would have a greater incentive to appeal, knowing they face no deferential standard. This

would burden both trial courts, who must create more extensive records anticipating plenary review, and appellate courts, who would face increased caseloads in an area where their institutional advantages are minimal.

Abuse-of-discretion review preserves the careful balance between access and efficiency that lies at the heart of Rule 24(a)(2), ensuring that intervention serves its intended function of protecting interests while promoting judicial economy. Only by respecting district courts' discretionary authority in this inherently fact-intensive and equity-based area can the federal courts maintain the flexible, practical approach to intervention that the Advisory Committee envisioned and that the efficient administration of justice demands.

B. The district court did not abuse its discretion in allowing the United States to Intervene in this private Americans with Disabilities Act action.

This case presents a fundamental question about the role Congress intended the federal government to play in enforcing the ADA. When Congress crafted this comprehensive remedial statute, it declared explicitly that the United States would play "a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities." 42 U.S.C. § 12101(b)(3). This was no mere aspirational statement or legislative afterthought. It represented a deliberate constitutional and policy choice rooted in the lessons of the civil rights movement: that meaningful equality requires not just private enforcement, but sustained federal leadership and institutional reform.

Congress deliberately modeled the ADA on the Civil Rights Act of 1964, intending it to provide "clear, strong, consistent, enforceable standards" addressing discrimination against individuals with disabilities in all aspects of American life. 42 U.S.C. § 12101(b)(3). Like other major civil rights statutes, the ADA must be construed broadly to effectuate its sweeping remedial

purposes, not narrowly to reduce its impact on existing systems of segregation and exclusion. *See Barden v. City of Sacramento*, 292 F.3d 1073, 1077 (9th Cir. 2002). The legislative history reveals Congress's understanding that eliminating disability discrimination would require the same comprehensive federal enforcement that had proven essential to dismantling racial segregation. *See* 42. U.S.C. § 12133; 29 U.S.C. § 794a(a)(2); *United States v. Florida*, 938 F.3d 1221, 1226 (11th Cir. 2019). Private litigation alone, however meritorious, could not achieve the systematic transformation necessary to fulfill the ADA's promise of full community integration.

This intervention decision rests on two complementary constitutional and statutory foundations, each independently sufficient to support the district court's ruling. R. 7-8. First, Congress expressly authorized the United States to enforce Title II through a carefully crafted statutory framework that deliberately incorporates the proven enforcement mechanisms of prior civil rights laws, creating clear federal enforcement authority and substantial interests in this litigation. 42. U.S.C. § 12133; 29 U.S.C. § 794a(a)(2); 42 U.S.C. § 2000d-1. Second, the United States has distinct sovereign interests in ensuring compliance with federal regulations it promulgates and administers—interests that are categorically different from those of private plaintiffs and that no individual party can adequately represent. 42 U.S.C. § 12134(a). Together, these grounds show that the district court acted well within its discretion in recognizing the United States' right to intervene and pursue the comprehensive relief necessary to vindicate the ADA's integration mandate and constitutional purposes.

1. Congress expressly authorized federal enforcement of Title II through deliberate incorporation of established civil rights remedies.

The United States has clear and unambiguous statutory authority to enforce Title II, creating substantial interests in this litigation that easily satisfy the requirements of Federal Rule

of Civil Procedure 24(a)(2). This authority flows directly from Congress's deliberate decision to incorporate the enforcement mechanisms of the Rehabilitation Act and Title VI of the Civil Rights Act, statutes under which federal enforcement authority was already well-established, extensively exercised, and judicially recognized when Congress enacted the ADA in 1990. *Florida*, 938 F.3d at 1230.

a. Congress's express declaration of the United States' enforcement role shows "person" includes the United States.

Franklin argues that the United States cannot enforce Title II of the ADA because Section 12133 provides remedies only "to any person alleging discrimination," and the United States is not a "person" within the statute's meaning. This cramped textual argument ignores both the broader statutory context and Congress's express intent to ensure strong federal enforcement of disability rights. 42 U.S.C. § 12133. The term "person" must be read in light of Congress's unambiguous declaration that the United States would play "a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities." 42 U.S.C. § 12101(b)(3). Statutory construction is a holistic endeavor—terms used in isolation must be clarified if "only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371 (1988). This express congressional directive cannot be reconciled with an interpretation that would categorically exclude the federal government from ADA enforcement.

Congress's use of "any person" in Section 12133 should be understood to encompass the Attorney General acting on behalf of individuals with disabilities, consistent with Congress's express enforcement mandate. When Congress declares that the United States shall play a "central role" in enforcement and then provides enforcement mechanisms "to any person," the most natural

reading includes the federal government exercising its congressionally mandated enforcement authority. 42 U.S.C. § 12101(b)(3); 42 U.S.C. § 12133. This interpretation harmonizes the statutory text with Congress's explicit enforcement directive, while Franklin's reading would create an internal contradiction that renders Congress's "central role" declaration meaningless. *See Nielson v. Preap*, 586 U.S. 392, 407-408 (2019) (recognizing ordinary grammar and usage used for statutory interpretation "unless they contradict legislative intent or purpose").

b. Title II's statutory cross-references establish clear federal enforcement authority.

Title II's enforcement provision operates through a deliberate and sophisticated chain of statutory cross-references that Congress carefully designed to import proven civil rights enforcement tools while ensuring their effective application to disability discrimination. 42. U.S.C. § 12133; 29. U.S.C. § 794a(a)(2); 42 U.S.C. § 2000d-1. Section 12133 states that the "remedies, procedures, and rights set forth in" Section 505 of the Rehabilitation Act "shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination." 42 U.S.C. § 12133. Section 505, in turn, incorporates "the remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964." 29 U.S.C. § 794a(a)(2). This "nesting dolls" structure was no accident of legislative drafting or oversight. Congress deliberately chose to build this upon the enforcement framework that had proven successful in combating racial discrimination, ensuring that disability rights would receive equally vigorous federal protection and benefit from decades of accumulated enforcement experience and judicial precedent. *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998) ("When administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations as well.").

Title VI's enforcement provisions unambiguously authorize federal legal action through language that had been consistently interpreted to include judicial enforcement. *Florida*, 938 F.3d at 1233. The statute empowers agencies to "effect" compliance "by any other means authorized by law," language that federal courts had repeatedly and uniformly interpreted to include judicial enforcement actions by the United States. 42 U.S.C. § 2000d-1. This interpretation was not merely well-established by 1990; it was the settled, uncontroversial understanding of Title VI's scope that formed the backdrop against which Congress legislated. *Lorillard Div. of Loew's Theatres, Inc. v. Pons*, 434 U.S. 575, 581 (1978) ("[When] Congress adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute"). Federal courts had repeatedly recognized the United States' authority to file Title VI enforcement suits in cases spanning education, healthcare, employment, and public accommodations. *See United States v. Baylor Univ. Med Ctr.*, 736 F.2d 1039, 1043-45 (5th Cir. 1984); *United States v. Marion Cnty. Sch. Dist.*, 625 F.2d 607, 612-13 (5th Cir. 1980); *Adams v. Richardson*, 480 F.2d 1159, 1161 n.1, 1164 (D.C. Cir. 1973).

The phrase "any other means authorized by law" cannot reasonably be interpreted to exclude federal judicial enforcement. Had Congress intended to limit Title VI enforcement to funding termination and private litigation, it could easily have said so. *Russello v. United States*, 464 U.S. 16, 23 (1983) (reasoning that if Congress intended restriction, that it would be express). Instead, it chose expansive language that encompasses the full range of legal remedies available to the federal government. 42 U.S.C. § 2000d-1. This interpretation serves the statute's remedial purposes by ensuring that the government has adequate tools to address discrimination that private

parties might be unable or unwilling to challenge. *United States v. Florida*, 938 F.3d 1221, 1233 (11th Cir. 2019).

c. Federal enforcement authority implements essential constitutional and policy goals.

This congressional design serves essential constitutional and policy purposes that extend far beyond the immediate facts of this case. Federal enforcement authority implements Congress's Section 5 power to enforce the Fourteenth Amendment's equal protection guarantee, providing prophylactic protection against constitutional violations that might otherwise escape remedy. *See Bd. of Trs. v. Garrett*, 531 U.S. 356, 365 (2001). This Court has consistently recognized that Congress has broad latitude under Section 5 to enact appropriate legislation preventing and deterring constitutional violations, including legislation that prohibits conduct that might not independently violate the Constitution. *Id.*; *Nevada Dep't of Human Res. v. Hibbs*, 538 U.S. 721, 728 (2003). Federal enforcement authority is a crucial component of this framework, ensuring that constitutional violations receive prompt and effective response regardless of the resources or inclination of affected individuals.

Federal enforcement also ensures uniform interpretation and application of federal disability rights standards across all jurisdictions, preventing the patchwork of varying compliance standards that would undermine the ADA's national scope and constitutional purposes. When states and localities apply different interpretations of federal requirements, they create exactly the geographic disparities in constitutional protection that the Fourteenth Amendment's Equal Protection Clause was designed to prevent. Federal enforcement provides a crucial mechanism for maintaining consistency and preventing the race to the bottom that can occur when compliance standards vary by jurisdiction.

Federal enforcement provides the institutional capacity for systemic reform that individual plaintiffs often lack. Private litigation typically focuses on particular instances of discrimination affecting specific individuals, while federal enforcement can address the structural and policy causes that generate discrimination across entire systems. Here, for example, the private plaintiffs seek protection against their own future institutionalization, while the United States seeks comprehensive reforms to ensure adequate community-based services for all at-risk individuals throughout Franklin. R. at 24. Only federal enforcement has the scope, authority, and resources necessary to achieve the systematic transformation that Congress intended when it declared that the ADA would serve as a comprehensive mandate for eliminating discrimination.

2. The United States has distinct sovereign interests that no private party can adequately represent.

Beyond its statutory enforcement authority, the United States has substantial and categorically distinct sovereign interests in this litigation arising from its constitutional and regulatory responsibilities for implementing and interpreting Title II. *Olmstead*, 527 U.S. at 597-598 ("Because the Department is the agency directed by Congress to issue regulations implementing Title II, its views warrant respect."). These interests extend far beyond the immediate concerns of individual plaintiffs and reflect fundamental governmental responsibilities that no private party can adequately represent or protect.

a. Federal regulatory responsibilities create substantial government interests.

Congress directed the Attorney General to "promulgate regulations" when implementing Title II, 42 U.S.C. § 12134(a), and required those regulations to be "consistent with" the coordination regulations applicable to Rehabilitation Act recipients. 42 U.S.C. § 12134(b). Congress recognized that effective disability rights enforcement requires detailed regulatory

guidance, consistent administrative oversight, and authoritative interpretation of complex statutory requirements. The resulting regulations, including the integration mandate at 28 C.F.R. § 35.130(d), represent binding legal interpretations that define the scope and content of Title II obligations for all covered entities nationwide.

The United States' regulatory responsibilities create profound interests in ensuring correct judicial interpretation and consistent application of these requirements across all jurisdictions and contexts. *Ceres Gulf v. Cooper*, 957 F.2d 1199, 1203 (5th Cir. 1992) (finding that Rule 24(a)(2) interest of consistent application of statutory scheme for administrating agency); *Smith v. Pangilinan*, 651 F.2d 1320, 1324 (9th Cir. 1981) (finding that Rule 24(a)(2) interest of enforcement for Attorney General). When private parties litigate ADA compliance, they implicate the meaning and scope of federal regulations that extend far beyond the immediate case. Adverse judicial interpretations can undermine regulatory effectiveness across all covered entities, creating confusion about compliance requirements and potentially immunizing discriminatory practices that the regulations were designed to prohibit. Inconsistent judicial applications can fragment the uniform national standards that Congress intended, creating geographic disparities in disability rights protection that undermine the ADA's constitutional and policy purposes.

These systemic regulatory concerns extend far beyond the immediate interests of individual plaintiffs, who typically seek primarily personal relief rather than regulatory coherence or consistency. While private parties may share the government's interest in favorable legal interpretations, they lack both the institutional responsibility and the expertise necessary to protect the broader regulatory framework that governs disability rights nationwide. The United States alone has the authority and responsibility to ensure that federal regulations receive correct and consistent judicial interpretation.

b. Institutional expertise distinguishes federal enforcement from private litigation.

The United States brings to this litigation institutional expertise and enforcement experience that no private party can replicate or adequately represent. Through over three decades of ADA enforcement, the Department of Justice has developed unparalleled understanding of disability discrimination patterns, effective remedial strategies, and the practical challenges of achieving meaningful integration in complex institutional settings. This expertise encompasses not merely legal analysis but practical knowledge of service delivery systems, funding mechanisms, regulatory compliance strategies, and the operational realities of providing community-based services to individuals with disabilities.

This institutional knowledge enables the United States to design comprehensive remedies that address root causes of discrimination rather than merely treating individual symptoms. Private plaintiffs, however capable and well-intentioned, typically lack the broad perspective necessary to identify and address the systemic failures that generate discrimination across entire service systems. Here. for example, the private plaintiffs focus primarily on ensuring their own access to appropriate community-based services, while the United States seeks reforms that will prevent unnecessary institutionalization for all similarly situated individuals throughout Franklin's service system. R. at 24.

c. Federal intervention promotes judicial efficiency.

Federal intervention also serves important efficiency and consistency values that benefit all parties while protecting interests that private litigation cannot adequately address. Rather than forcing the United States to file a separate enforcement action with duplicative discovery, parallel proceedings, and potentially conflicting remedies, intervention allows coordinated resolution of

all related compliance issues in a single comprehensive proceeding. Monica Haymond, *Intervention and Universal Remedies*, 91 U. Chi. L. Rev. at 1885-86. This approach reduces litigation costs and burdens for all parties while ensuring comprehensive relief that addresses both individual and systemic concerns. *Id.*

This Court has specifically recognized these efficiency benefits as supporting federal intervention in civil rights cases. *See Trbovich v. United Mine Workers,* 404 U.S. 528, 538 n.10 (1972) (noting that intervention subjects defendants to "relatively little additional burden" compared to separate litigation). Further, the alternative of parallel federal litigation would impose far greater burdens on defendants, who would face the expense and complexity of defending multiple related cases with overlapping factual and legal issues. It would also burden the court system with duplicative proceedings and create risks of inconsistent outcomes that could undermine effective compliance.

d. Private parties cannot represent federal sovereign interests.

The district court properly concluded that private parties cannot adequately represent the distinct federal interests described above. This conclusion reflects not any deficiency in the private plaintiffs' capabilities or commitment, but the differences between individual and governmental interests in civil rights enforcement. Private parties seek primarily personal relief and vindication of their individual rights, while the federal government seeks to ensure systemic compliance with federal law and protection of the public interest in equal treatment under law.

Federal Rule of Civil Procedure 24(a)(2) requires only that representation "may be" inadequate, not that it will prove inadequate in all circumstances. *Trbovich*, 404 U.S. at 538 n.10. Here, the inadequacy of representation is clear and categorical. Private parties cannot adequately represent the United States regarding the proper interpretation and application of federal

regulations that the Attorney General promulgated and administers. They lack both the authority and the institutional expertise necessary to protect the government's regulatory interests. They cannot seek the comprehensive systemic relief that federal enforcement is designed to achieve, nor can they provide the ongoing oversight and technical assistance that effective institutional reform requires.

The district court's intervention decision thus reflects sound application of Rule 24(a)(2) to the unique and important circumstances of federal civil rights enforcement. By letting the United States participate as of right, the court ensured that all relevant interests receive adequate representation while promoting the efficient and comprehensive resolution of ADA compliance issues that Congress intended when it established the federal government's "central role" in disability rights enforcement. This decision serves not only the immediate interests of the parties but also the broader public interest in effective enforcement of federal civil rights law and the constitutional principle of equal protection under law.

CONCLUSION

The Court of Appeals correctly deferred to the Department of Justice's guidance document and found that patients at risk of initiation are afforded protection under the Americans with Disabilities Act and the integration mandate. Additionally, the United States appropriately intervened in the action, as it was designated by Congress to enforce the American with Disabilities Act and to regulate and promulgate its enforcement, as a result, has an interest in how that enforcement is conducted.

This Court should AFFIRM the Twelfth Circuit Court of Appeal's judgment in all respects.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

APPENDIX TABLE OF CONTENTS

Page

APPENDIX A

STATUTORY PROVISIONS AND RULES

28. C.F.R. § 35.130(d)

(d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

29 U.S.C. § 794a(a)(2)

(a)(2) The remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) (and in subsection (e)(3) of section 706 of such Act (42 U.S.C. 2000e-5), applied to claims of discrimination in compensation) shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 504 of this Act [29 USCS § 794].

42 U.S.C. § 12101

(a) Findings. The Congress finds that—

(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose. It is the purpose of this Act—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

42 U.S.C. § 12132

Subject to the provisions of this title, 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.

42 U.S.C. § 12133

The remedies, procedures, and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. 794a) shall be the remedies, procedures, and rights this title provides to any person alleging discrimination on the basis of disability in violation of section 202 [42 USCS § 12132].

42 U.S.C. § 12134

(a) In general. Not later than 1 year after the date of enactment of this Act [enacted July 26, 1990], the Attorney General shall promulgate regulations in an accessible format that implement

this subtitle. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 223, 229, or 244 [42 USCS § 12143, 12149, or 12164].

(b) Relationship to other regulations. Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) shall be consistent with this Act and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under such section 504.

(c) Standards. Regulations under subsection (a) shall include standards applicable to facilities and vehicles covered by this subtitle, other than facilities, stations, rail passenger cars, and vehicles covered by subtitle B. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504(a) of this Act [42 USCS § 12204(a)].

42 U.S.C. § 2000d-1

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 [42 USCS § 2000d] with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or

order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

Fed. R. Civ. P. 24(a)(2).

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who: **(2)** claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.