No. 25-140

IN THE

Supreme Court of the United States

NOVEMBER TERM 2025

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

Petitioner,

— versus —

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 3403

Attorneys for Respondent

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether an individual who is at risk of institutionalization or segregation in a hospital in the future maintain a claim for discrimination under Title II of the ADA when a public entity refuses to provide the services in the most integrated setting appropriate to the individual's needs?

II. Whether Congress, by incorporating the enforcement provisions of the Rehabilitation Act and Title VI into Title II of the ADA, authorized the Attorney General to sue under Title II, and thus the United States has an interest sufficient to intervene as of right under Federal Rule of Civil Procedure 24(a)(2), where DOJ investigated Petitioners' closure of community mental health facilities and intervened after Respondents remained institutionalized despite being cleared for community placement.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

DISTRICT COURT CASES

STATUTORY PROVISIONS

LEGISLATIVE MATERIALS

CODE OF FEDERAL REGULATIONS

OTHER AUTHORITY

OPINIONS BELOW

The unreported Opinions of the United States District Court for the Southern District Court for the District of Franklin, *State of Franklin Dep't of Soc. & Health Serv.'s v. Kilborn*, Case No. 1:22-cv-00039 (June 19, 2022) is contained in the Record of Appeal at pages 1–21 where the District Court GRANTED the United States' motion to intervene, GRANTED Plaintiffs' and the United States' motion for summary judgment, and DENIED Defendants' motion for summary judgment. The unreported Opinion of the United States Court of Appeals for the Twelfth Circuit, *State of Franklin Dep't of Soc. & Health Serv.'s. v. Kilborn*, Case No. 24-892 (June 26, 2025), is contained in the Record of Appeal at Pages 22–38. The Appellate Court AFFIRMED the District Court's decisions.

STATEMENT OF THE CASE

I. Summary of Facts

This case arises from Petitioners' systemic failure to provide community-based mental health treatment for individuals with serious mental illnesses. Franklin's system of mental health care has been in crisis for more than a decade. In 2011, the State closed its Mercury and Bronze community mental health centers and simultaneously eliminated inpatient psychiatric services at its third center, Platinum Hills. R. at 15–16. These facilities previously provided community-based treatment throughout the state. Their closures left entire regions without any public mental health infrastructure. R. at 15–16. As a result, more than 550,000 Franklin residents now live more than two hours from the nearest state-operated facility. R. at 15.

Individuals in those areas must either travel extraordinary distances for care or forego treatment altogether.

Private facilities exist in Franklin, but the costs are prohibitive for most patients with serious mental illnesses. R. at 13. For individuals unable to afford private treatment, inpatient treatment at a hospital has become the only available option. R. at 13–15. Patients at hospitals are confined in an institutional setting, often far from their homes and families, even when community-based treatment is medically appropriate. R. at 13. The consequences of Petitioners' closures are demonstrated by the experiences of the three Respondents in this case.

Sarah Kilborn ("Kilborn") was diagnosed with bipolar disorder in 1997 and has endured repeated episodes of severe depression despite prescribed medication. R. at 12. After a suicide attempt, she voluntarily admitted herself to Southern Franklin Regional Hospital in Silver City in 2002, remaining until 2004 when her treating physician determined she was stable. R. at 14. Kilborn was re-admitted in 2011. R. at 13. In March 2013, her physician recommended daily treatment at a community mental health facility, which would have allowed her to live at home while receiving intensive therapy. R. at 13. Unfortunately for Kilborn, no state-operated facility existed within three and a half hours of her home, and she could not afford the nearby private facility. R. at 13. As a result, she remained hospitalized until May 2015. R. at 13. Kilborn was again admitted in October 2018, and by 2020 her physician once more determined she could be discharged to a community setting. R. at 13. Yet, because

Petitioners' closures had not been remedied, no such placement was available. Kilborn was not discharged until January 2021. R. at 13.

Eliza Torrisi ("Torrisi") was diagnosed with bipolar disorder as a teenager in 2016. R. at 14. Despite medication and psychotherapy, her episodes remained severe, marked by days-long manic periods that put herself and others at risk. R. at 14. In 2019, her parents admitted her to Newberry Memorial Hospital, a state-operated facility in Golden Lakes. R. at 14. By May 2020, her physicians also determined she could transition to inpatient treatment at a community mental health facility, where she would benefit from greater opportunities for socialization and supervised outings. R. at 14. But again, no state or private community mental health facility offering inpatient care was available within four hours of her home, and the only state-operated center in Platinum Hills did not provide inpatient services. R. at 14. Torrisi therefore remained at Newberry until May 2021. After surviving another manic episode, she was readmitted in August 2021 and discharged in January 2022. R. at 14.

Malik Williamson ("Williamson"), diagnosed with paranoid schizophrenia in 1972, has similarly endured repeated hospitalizations at Franklin State University Hospital ("FSUH"). R. at 14. In 2017, his daughter and guardian admitted him to FSUH in Platinum Hills, which was located right near her home and allowed for regular visitation. R. at 15. But after two years of intensive inpatient treatment, including new medications, his physicians, too, recommended transfer to a community mental health facility for continued inpatient care. R. at 15. Yet again,

the only state-operated community facility in Platinum Hills did not offer inpatient services, and the nearest private facility was over two hours away. R. at 15. Because his physicians recommended the need for nearby family support, Williamson remained institutionalized at FSUH until June 2021, when he was discharged to outpatient care. R. at 15.

Although the Petitioner blames the closure of the Mercury and Bronze centers and eliminating the inpatient program at Platinum Hills on legislative budget cuts, the legislature increased the Department's budget by five percent in 2021. R. at 15–16. Still, the Petitioner has not used those funds to reopen the Mercury or Bronze facilities or to restore inpatient capacity at Platinum Hills. R. at 16. Despite the appropriation, Petitioner has continued to operate without state-run community options near large portions of the population, leaving patients like Kilborn, Torrisi, and Williamson dependent on hospital institutionalization even when their physicians recommend community-based care.

II. Nature of Proceedings

The District Court. Kilborn, Torrisi, and Williamson filed suit in the United States District Court for the District of Franklin in February 2022, alleging that Petitioners' closure of community mental health facilities and refusal to expend legislative appropriations to reopen them violated Title II of the ADA. R. at 2. In response to these failures, the United States Department of Justice ("DOJ") opened an investigation into the State of Franklin Department of Social and Health Services' compliance with Title II. R. at 2. DOJ's Civil Rights Division found that Petitioners' practices violated Title II of the Americans with Disabilities Act ("ADA") by

unnecessarily institutionalizing individuals with disabilities rather than providing services in the most integrated setting appropriate to their needs. R. at 2. Following their investigation, the DOJ filed a motion to intervene in May 2022, with one caveat: the United States requests injunctive relief for all those in Franklin who are at risk of being unnecessarily institutionalized. R. at 2. The Respondents consented, but Petitioner opposed. R. at 2.

The district court granted the motion, holding that the intervention was timely, that the DOJ had an interest in the litigation, that its interest could be impaired if excluded, and that the private plaintiffs could not represent the DOJ's systemic interests. R. at 3–9. On the merits, the court granted summary judgment for Plaintiffs and the DOJ on liability. R. at 21. The court relied on *Olmstead v. L.C.*, 527 U.S. 581 (1999), and the DOJ's integration mandate regulations, concluding that unnecessary institutionalization constitutes discrimination under Title II. R. at 18–19. It further held that individuals "at risk" of unnecessary institutionalization could bring ADA claims, reasoning that requiring actual confinement would thwart Title II's preventative purposes. R. at 19. At trial on relief, the court heard testimony from nineteen witnesses. R. at 24. It found that Respondents were "at risk of future institutionalization and segregation." R. at 24. The court issued an injunction requiring Petitioner to propose a corrective plan ensuring services in the most integrated setting appropriate and preventing unnecessary institutionalization. R. at 24–25.

The Twelfth Circuit Court of Appeals. Petitioner appealed, renewing its arguments that it lacked authority to enforce Title II and that "at risk" individuals cannot sue. R. at 3. The court affirmed both issues, first holding the district court had not clearly erred in concluding that Title II incorporates the DOJ's enforcement authority and thus provides the DOJ with an interest sufficient to intervene. R. at 26–27. The court emphasized Congress's decision to cross-reference the Rehabilitation Act and Title VI and noted that the DOJ's regulatory responsibilities under § 12134 would make little sense if it lacked enforcement power. R. at 27. On the "at risk" question, the court also affirmed, holding that individuals who face a substantial risk of institutionalization fall within Title II's protections. R. at 9. In doing so, it joined six other circuits in recognizing that Title II extends to those in imminent danger of unnecessary institutionalization, not just those already confined. R. at 29. This Court granted certiorari, limited to the following questions decided below: (1) whether individuals "at risk" of institutionalization may bring claims under Title II, and (2) whether the United States may enforce Title II and thus has an interest sufficient to intervene as of right under Rule 24(a)(2). R. at 39.

SUMMARY OF ARGUMENT

This Court should affirm the holdings of the Twelfth Circuit Court of Appeals. The appellate court correctly held that individuals at risk of institutionalization or segregation can bring a claim for discrimination under Title II of the ADA. Additionally, the Twelfth Circuit Court of Appeals was correct, or at a minimum not clearly incorrect, in finding the United States may sue to enforce Title II of the ADA.

I.

The ADA prohibits discrimination against a qualified individual with a disability. To effectuate this, the integration mandate requires public entities administer services in the most integrated setting appropriate to the needs of the individual, meaning individuals with disabilities can interact with non-disabled persons to the fullest extent possible.

The Twelfth Circuit Court of Appeals was right to find that individuals with disabilities at risk of institutionalization or segregation in the future, but who are not currently institutionalized, can bring a claim for discrimination under the ADA. The plain language of both the statute and its implementing regulations supports this finding. There is nothing in the language of the statutes or its regulations to suggest that Congress intended for the ADA's protections through the integration mandate to only extend to those who are currently institutionalized. In fact, such a finding would directly contradict the purpose of the ADA—to eliminate discrimination against individuals with disabilities—by requiring individuals with disabilities to endure the discriminatory actions before they even had the opportunity to challenge the action as discriminatory. If such a limitation is to be imposed, it should be done through the legislature and not by the courts.

Furthermore, the DOJ explicitly clarified that the integration mandate's protections against unjust isolation cover not only individuals with disabilities who are currently isolated, but also those at risk of isolation. Because the DOJ is the agency that promulgated the integration mandate, its interpretation is owed

deference. Accordingly, multiple circuit courts have consistently held individuals with disabilities at risk of unjust isolation can bring a Title II discrimination claim under the ADA. What is more, limitations on at-risk individuals capable of bringing a claim and defenses to the claims are already in place. Thus, individuals with disabilities at risk of institutionalization can be permitted to bring discrimination claims without fearing such action will result in meritless litigation. As such, the statute itself, ideals of justice, and the current legal authority all recognize the right of individuals with disabilities at risk of unjust institutionalization or segregation to bring discrimination claims under Title II of the ADA.

II.

The Twelfth Circuit Court of Appeals was correct to hold that the United States may sue under Title II. 42 U.S.C. § 12133 incorporates the enforcement provisions of the Rehabilitation Act and Title VI, both of which have long included DOJ litigation authority. When Congress adopted that framework, it carried forward the federal government's role as the ultimate enforcer when administrative measures failed. The Attorney General does not sue as a "person alleging discrimination," but rather enforces the rights of such persons through the remedies Congress incorporated wholesale.

Title II's remedies are coextensive with those available under the Rehabilitation Act and Title VI. Because Title VI has always encompassed DOJ enforcement, this shuts out Petitioners' claim that Title II excludes it. Limiting Title II to private suits alone would contradict the statutory text and Congress's intent to

assign the federal government a "central role" in enforcement. The Twelfth Circuit rejected the arguments Petitioner makes here, reasoning that Title II imports the DOJ's litigation authority through its cross-references, the DOJ's regulatory role under § 12134, and legislative history identifying referral to the DOJ as the statute's major enforcement sanction. For more than thirty years, the DOJ has filed Title II suits nationwide, and courts have adjudicated them as routine.

Kilborn, Torrisi, and Williamson remained institutionalized long after physicians cleared them for community treatment because Petitioner closed facilities, ignored legislative appropriations, and left half a million residents without meaningful access to care. The DOJ investigated, found violations, and intervened to secure systemic reform—precisely the role Congress envisioned. Because the Attorney General may enforce Title II, the United States has a protectable interest sufficient to intervene under Rule 24(a)(2). The judgment below was not clearly incorrect under the abuse of discretion standard, and this Court should affirm.

ARGUMENT

Standard of Review. The proper standard of review for the issue of whether an individual who is at risk of institutionalization or segregation in a hospital in the future can maintain a claim for discrimination under Title II of the ADA when a public entity refuses to provide the services in the most integrated setting appropriate to the individual's needs is *de novo*. *United States v. Mississippi*, 82 F.4th 387, 391 (2023). The appropriate standard of review for the intervention issue is abuse of discretion. Courts consistently review the denial or grant of intervention as of right under Rule 24(a) for abuse of discretion because trial courts are best positioned to

manage intervention requests and balance the interests at stake. *Illinois v. City of* Chicago, 912 F.3d 979, 984 (7th Cir. 2019); *see also Intl'l Paper Co. v. Town of Jay Me*, 887 F.2d 338, 344 (1st Cir. 1989); *Am. Lung Ass'n v. Reilly*, 962 F.2d 258, 261 (2d Cir. 1992); *Brody v.* Spang, 957 F.2d 1108, 1115 (3d Cir. 1992); *In re Sierra Club*, 945 F.2d 776, 779 (4th Cir. 1991) (granting of a motion to intervene should be reviewed as abuse of discretion). Even if this Court were to adopt a *de novo* review, the outcome would not change. Thus, under either standard—abuse of discretion or *de novo*—the judgment of the court of appeals should be affirmed.

I. THE APPELLATE COURT PROPERLY HELD THAT PLAINTIFFS NEED NOT SUFFER INSTITUTIONALIZATION BEFORE CHALLENGING DISCRIMINATION UNDER TITLE II OF THE ADA.

An individual does not need to currently be institutionalized or segregated to bring a claim under Title II of the ADA. The plain language of the statute, its implementing regulations, and the current case law recognize that the ADA protects individuals facing a risk of unjustified institutionalization or segregation. Limiting the ADA coverage to only those already institutionalized would thwart the very purpose of the ADA. Therefore, this Court should uphold the appellate court's—along with the Second, Fourth, Sixth, Seventh, and Tenth Circuit's—allowance of plaintiffs at risk of institutionalization or segregation to bring a claim of discrimination.

A. The ADA's Text and Its Regulations Do Not Condition Discrimination Claims on Being Currently Institutionalized.

The text of Title II and its regulations do nothing to limit the scope of those who can maintain a claim for discrimination to only those who are presently institutionalized or segregated. Title II of the ADA provides that "no qualified

individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132.[1] In order to ensure this demand for inclusion became a reality, Congress directed the Attorney General to promulgate regulations implementing the requirements of Title II. 42 U.S.C. § 12134(a). As a result, the Attorney General issued regulation 28 C.F.R. § 35.130(d). Known as the "integration regulation", it states: "A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." *Id.*; *Olmstead*, 527 U.S. at 591. "[T]he most integrated setting appropriate to the needs of qualified individuals with disabilities" is defined by the Attorney General as "a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible". 28 C.F.R. pt. 35, app. B. When examining the statute and its regulations, the Tenth Circuit held that "there is nothing in the plain language of the regulations that limits protections to persons who are currently institutionalized." *Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175, 1181 (10th Cir. 2003).

As demonstrated by the Tenth Circuit in *Fisher*, the plain language of the integration allows for individuals at risk of institutionalization or segregation to bring discrimination claims. 335 F.3d 1175, 1181 (2003). The plaintiffs in *Fisher* were individuals with disabilities who received medical prescriptions through a state-

[1] It is undisputed that Kilborn, Torrisi, and Williamson are qualified individuals with disabilities.

funded, community-based health care program. *Id.* at 1177. Inevitably, the state agency overseeing the program limited the number of prescriptions covered by the program. *Id.* Unable to afford their life-sustaining medications, each plaintiff faced a risk of being forced out of their homes and into nursing homes—where all the medications would be provided by the state. *Id.* at 1178. The district court found the plaintiffs could not bring an ADA claim because they were not currently institutionalized. *Id.* The Tenth Circuit overturned the district court's decision, finding its limitation on those who could bring a claim to be erroneous. In its reasoning, the Tenth Circuit noted that nothing in the language of the regulation limited it to only those who were institutionalized. *Id.* at 1181. Moreover, the Court highlighted that such a limitation would make the protections of the regulation meaningless. *Id.*

Plaintiffs, Kilborn, Torrisi, and Williamson, undoubtedly fall within the protections of Title II. Each Plaintiff has a well-documented history of mental illness requiring inpatient treatment at Franklin hospitals, where their treating physicians determined that community-based treatment would be appropriate and the best course of treatment. R. at 12. However, because Franklin only operates one distant community facility, Kilborn, Torrisi, and Williamson were all forced to remain institutionalized for longer than medically necessary. R. at 12–15. Despite none of the Plaintiffs being currently hospitalized, similar to the plaintiffs in Fisher, their incurable conditions place them at a continued, heightened risk of being institutionalized again due to the absence of adequate community care options.

This risk of being institutionalized or segregated is enough to bring a claim for discrimination. Nothing in the ADA's text or the implementing regulations requires Plaintiffs to endure renewed, degrading institutionalized isolation before being allowed to challenge the very action subjecting them to the isolation. Title II prohibits discrimination "by reason of disability" and instructs public entities to provide services in "the most integrated setting appropriate" to each individual's needs. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(d). The statute and regulations speak broadly. Nothing in the language limits discrimination claims under the integration mandate to only those who are *currently* institutionalized or segregated. Court precedent has established that "Congress says in a statute what it means and means in a statute what it says there." *Hartford Underwriters Ins. Co. v. Union*, 530 U.S. 1, 6 (2000). Thus, because nothing in the statute or its regulation mandates an individual be presently institutionalized or segregated to bring a discrimination claim, Congress did not mean for such an unscrupulous limitation to apply.

1. Requiring institutionalization as a prerequisite to filing a discrimination claim would hollow out the ADA's protections.

Requiring plaintiffs to be institutionalized in a discriminatory fashion before allowing them to bring a claim thwarts the very core of the ADA. Congress explicitly acknowledged that society's historical segregation of individuals with disabilities remains a "serious and pervasive social problem" with discrimination continuing in "such critical areas as…institutionalization". 42 U.S.C. § 12101(a)(2)–(3). Further, the legislature recognized that individuals facing disability-based discrimination were often powerless due to a systematic lack of legal recourse. Following the

confession of the legal systems' past failure to offer protection and recognition of the persistent, unjustified discrimination against individuals with disabilities, Congress stated the purpose behind enacting the ADA: "[T]o provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). The integration mandate is one way the ADA has sought to eliminate discrimination by offering individuals with disabilities protection. *See* 28 C.F.R. § 35.130(d). However, if "plaintiffs were required to segregate themselves by entering an institution before they could challenge an allegedly discriminatory law or policy that threatens to force them into segregated isolation", then these "protections would be meaningless." *Fisher*, 335 F.3d at 1181. Especially when institutionalization had the potential to be permanent. *M.R. v. Dreyfus*, 697 F.3d 706, 735 (9th Cir. 2011).

Congress's goal was to eradicate discrimination against individuals with disabilities. To hold that plaintiffs must first submit to institutionalization before bringing a claim would replicate the systemic failures Congress condemned in enacting the ADA—stripping individuals with disabilities from meaningful recourse. Such a requirement would inappropriately transform the ADA from a statute designed to prevent discrimination into one that facilitates it. Further, it would allow states to ignore integration obligations altogether until institutionalization occurs. Such an approach directly contradicts Congress's purpose. Kilborn, Torrisi, and Williamson must be allowed to challenge policies placing them at risk of institutionalization, especially when institutionalization can be permanent, further

allowing the state to avoid accountability. Anything less would hollow out the ADA and force plaintiffs to endure the very discrimination it was enacted to prevent.

2. Any potential limitation on the protections offered by the statute should be left to Congress to implement.

Courts are tasked with interpreting and applying the law, not creating or amending it. The constitutional doctrine of separation of powers ensures that the three branches of government act within their own authority by dividing governmental functions. By design, no single branch can wield the primary function of the others. The function of the courts in interpreting statutes is limited to the faithful application of the law to the facts of a case. *Bostock v. Clayton Cnty.*, 590 U.S. 644, 681 (2020). Only Congress has the authority to enact new legislation or address the unintended consequences of prior laws. *Id.* Consequently, courts "must recognize the importance of Congress's authority to amend statutes and must be careful not to encroach on its jurisdiction." *Idaho v. Hodel*, 814 F.2d 1288, 1299 (9th Cir. 1987). Additionally, "the same judicial humility that requires [the courts] to refrain from adding to statutes requires [the courts] to refrain from diminishing them. *Bostock*, 590 U.S. 644 at 681.

Congress drafted Title II of the ADA in broad, inclusive terms, prohibiting discrimination against "any qualified individual with a disability". 42 U.S.C. § 12132. Implementing regulations further required services to be provided in the most integrated setting appropriate. 28 C.F.R. § 35.130(d). Nowhere do either the statute or the regulation limit relief only to those who are already institutionalized or segregated. If Congress intended to confine the ADA's protections to such a narrow

subset of individuals, it could have easily done so. Alternatively, if this is Congress's intention, it can amend the law to impose such a limitation. The court of appeals correctly limited its interpretation of the statute to the facts of the case. To reverse this decision and limit claims to only those currently institutionalized or segregated would be encroaching on congressional authority by impermissibly diminishing the statute.

B. Courts Have Consistently Held Individuals at Risk of Institutionalization or Segregation Can Bring Discrimination Claims Under Title II of the ADA.

Numerous circuit courts have upheld the standard that a risk of institutionalization is sufficient to bring a discrimination claim. *E.g., Radaszewski ex rel Radaszewski v. Maram*, 383 F.3d 599 (7th Cir. 2004) (determining plaintiff stated a claim by showing defendants' actions opened the door to future institutionalization); *Townsend v. Quasim*, 328 F.3d 511 (9th Cir. 2003) (permitting a plaintiff who was not currently institutionalized to bring a claim challenging the policy that would result in his institutionalization for violation of the integration mandate). In *Olmstead*, the Supreme Court interpreted the integration mandate; it clarified that discrimination barred by the ADA extended to the "unjust isolation of individuals with disabilities." 527 U.S. at 597. Circuit courts have all held that the protection against discrimination outlined in *Olmstead* extends to individuals at risk of institutionalization. *E.g.*, *Fisher,* 335 F.3d at 1181 ("[N]othing in the *Olmstead* decision supports a conclusion that institutionalization is a prerequisite to enforcement of the ADA's integration requirements.").

Subsequent to the Supreme Court's decision, the DOJ clarified that individuals at risk of institutionalization or segregation in a hospital can maintain a claim for discrimination under the ADA. The DOJ explicitly stated that the discrimination claim acknowledged in *Olmstead* extends to protect individuals with disabilities who are at risk of being institutionalized or segregated. U.S. Department of Justice, *Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C.*, https://archive.ada.gov/olmstead/q&a_olmstead.htm (last updated Feb. 25, 2020). Specifically, "individuals need not wait until the harm of institutionalization or segregation occurs or is imminent" to be able to bring a claim for discrimination. *Id.* When an agency interprets its *own* regulation, that interpretation is "controlling unless plainly erroneous or inconsistent with the regulation." *Davis v. Shah*, 821 F.3d 231, 263 (2d Cir. 2016) quoting *Auer v. Robbins*, 519 U.S. 452, 461 (1997) (internal quotation marks omitted); *Cf. Loper Bright Enterprises v.* Raimondo, 603 U.S. 369 (2024) (overturning *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984), which required courts to give deference to agency interpretations of statutes, not its own regulations).

Consistent with this interpretation, *Pashby v. Delia*—along with other circuit courts— held that plaintiffs could bring a claim for discrimination based on a risk of institutionalization. *Pashby v. Delia*, 709 F.3d 307, 322 (4th Cir. 2013). The plaintiffs in *Pashby* faced the risk of being institutionalized because of a policy change under which the requirements for receiving personal care services in adult care homes were

less strict compared to the requirements of receiving such care in their homes. *Id.* at 314. The Fourth Circuit rejected the argument that plaintiffs were unlikely to succeed on the merits under *Olmstead* because the alleged discrimination had yet to result in actual institutionalization. *Id.* at 321; *accord M.R. v. Dreyfus*, 697 F.3d 706, 734 (9th Cir. 2012) ("[A] plaintiff need only show that the challenged state action creates a serious risk of institutionalization."); *Davis v. Shah*, 821 F.3d 231, 264 (2d Cir. 2016) (finding that a showing of substantial risk of institutionalization is sufficient to sustain an integration mandate violation claim); *Steimel v. Wernert*, 823 F.3d 902, 913 (7th Cir. 2016) (ruling it sufficient that plaintiffs provided evidence they were at serious risk of being institutionalized). *Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 979 F.3d 426, (6th Cir. 2020) ("[I]ndividuals with disabilities are subjected to discrimination when they are forced to choose between forgoing necessary medical services while remaining in the community or receiving necessary medical services while institutionalized—not just when they are actually institutionalized.").

The integration mandate is a DOJ regulation. The DOJ's interpretation of the integration mandate is consistent with the regulation; it serves the ADA's purpose of eliminating discrimination. As such, its interpretation of the integration mandate is controlling. Thus, as the long line of precedent has demonstrated, individuals at risk of institutionalization are permitted to bring a discrimination claim.

C. The Olmstead Factors and Fundamental Alteration Defense Strike a Balance Between Protection and Practicality.

Concerns that allowing individuals at risk of institutionalization or segregation will flood the courts with discrimination claims are misplaced, as several

established legal principles provide clear and sufficient limitations on who can bring a claim. For instance, to prove an *Olmstead* violation, the plaintiff must demonstrate: (1) the state's treatment professionals have found that community-based services are appropriate, (2) the affected individual does not oppose the community-based treatment, and (3) receiving community-based treatment can be reasonably accommodated, considering availability of resources and the needs of others with disabilities. *Olmstead*, 527 U.S. at 587.[2] Not to mention, a state is spared from its duty to offer services in the most integrated setting possible when it can demonstrate that doing so would necessitate a "fundamental alteration" of its program. *Id.* at 603-604; 28 C.F.R. § 35.130(b)(7).

As an illustration, in *Cohen ex rel. Bass v. N.M. Dept. of Health*, the Tenth Circuit—while affirming that institutionalization is not a prerequisite to bringing a discrimination claim— declined to extend *Olmstead's "*unjust isolation" claims past the context of institutionalization. *Cohen ex rel. Bass v. N.M. Dept. of Health*, 646 F.3d 717, 729 (10th Cir. 2011). The court explicitly found that it was not enough for a plaintiff to allege discrimination; to bring a claim under *Olmstead*, plaintiffs have to demonstrate that the state's policy does or will unjustifiably isolate them and fails to meet the integration mandate. *Id.*

Demonstrating another limitation on discrimination claims, the court in *Frederick L. v. Dept. of Pub. Welfare of Pa.*, found that the district court's acceptance of the Department of Public Welfare's ("DPW") fundamental-alteration defense was

[2] The first two elements of the test were determined by a majority of the Supreme Court and, as such, are binding on lower courts. The third element only portrays the belief of a plurality of the Court.

supported by the evidence. *Frederick L. v. Dept. of Pub. Welfare of Pa.*, 364 F.3d 487, 500 (3d Cir. 2004). In *Frederick L.* the plaintiffs argued DPW violated the ADA by failing to provide the community placement they were eligible for. *Id.* at 489. In response, DPW asserted the fundamental alteration defense. *Id.* at 490. DPW presented evidence of futile efforts to fund community placements through the budget given by the Governor, how it had properly spent its budget, how it had even re-allocated overtime savings to provide more funding for community-based services, opposition by the community of further expansion, and how an increase of community placements would results in a decrease of services provides to individuals who were institutionalized. *Id.* at 496. The court reasoned that this evidence, compared to only an assertion of financial constraints, was sufficient to argue a fundamental-alteration defense. *Id.* at 496, 500.

As *Cohen* and *Frederick* both point out, permitting individuals at risk of institutionalization or segregation does not equate to making the state's responsibility to provide community-based treatment boundless. Allowing plaintiffs at risk of institutionalization or segregation to bring a claim is not a guarantee that plaintiffs' claims will be successful. The *Olmstead* factors and the fundamental alteration defense sufficiently limit the scope of individuals who can bring claims for being at risk of institutionalization or segregation. Therefore, this Court should affirm the lower court's decision permitting individuals who are at risk of institutionalization or segregation in the future to bring discrimination claims under Title II of the ADA.

II. THE UNITED STATES MAY FILE SUIT TO ENFORCE TITLE II, GIVING IT AN INTEREST SUFFICIENT TO INTERVENE AS OF RIGHT UNDER RULE 24(A)(2).

The statutory text, structure, and history demonstrate that the Attorney General, and as such the United States, may enforce Title II, and precedent and practice leave no doubt that courts have consistently recognized that authority. Congress deliberately built Title II on the enforcement model of the Rehabilitation Act and Title VI—statutes that have always included DOJ litigation authority. 42 U.S.C. § 12133; 29 U.S.C. § 794a(a)(2). When Congress incorporated that framework, it carried forward not just private remedies but the federal government's role as the backstop enforcer. The Supreme Court held in *Barnes v. Gorman* that Title II's remedies are "coextensive" with those statutes, which necessarily includes DOJ enforcement. 536 U.S. 181, 185 (2002). Limiting Title II to private actions would collapse it into a weaker regime than its statutory predecessors, contrary to Congress's purpose of ensuring "clear, strong, consistent, and enforceable standards." 42 U.S.C. § 12101(b)(1)–(3).

Precedent agrees with this reading. The Eleventh Circuit in *United States v. Florida* explained that Title II incorporates the full enforcement scheme of Title VI, including federal litigation, and emphasized that Congress gave the Attorney General regulatory authority and identified DOJ litigation as the "major enforcement sanction" in Title II matters. 938 F.3d 1221, 1241, 1246 (11th Cir. 2019); *reh'g denied United States v. Sec'y Fla. Agency for Health Care Admin.*, 21 F.4th 730 (11th Cir. 2021); H.R. Rep. No. 101–485, pt. 2, at 98 (1990). District courts across the country

have accepted DOJ suits as routine, reflecting the consensus that federal enforcement is part of the statute's design.

The same is true for this case. Kilborn, Torrisi, and Williamson remained confined in institutions long after their physicians determined they could be transferred to community facilities because Petitioner closed facilities, ignored appropriations meant to reopen them, and left vast areas of the state without access to care. The DOJ investigated, found violations, and intervened to remedy a systemic problem that private plaintiffs alone cannot solve. That is precisely the role Congress envisioned when it imported Title VI's enforcement model into the ADA and entrusted the Attorney General with both regulatory and litigation authority. Therefore, the United States may file suit to enforce Title II, giving it an interest sufficient to intervene as of right under Rule 24(a)(2).

A. Title II's Text and Structure Incorporate the Federal Government's Longstanding Enforcement Role.

42 U.S.C. § 12133's text and structure make plain that the Attorney General may file a lawsuit to enforce Title II. Congress deliberately incorporated the enforcement provisions of the Rehabilitation Act, and through it, Title VI of the Civil Rights Act. 29 U.S.C. § 794(a)(2). Those statutes have always been enforced by the federal government, and courts for decades recognized the DOJ's authority to bring suit when administrative measures proved inadequate. *Adams v. Richardson*, 480 F.2d 1159, 1162 (D.C. Cir. 1973) (en banc); *Cannon v. Univ. of Chicago.*, 441 U.S. 677, 705 n.38 (1979) (abrogated on other grounds). Congress legislated against this backdrop and is presumed to have carried forward that settled understanding when

it imported Title VI's remedial scheme into the ADA. *Lorillard v. Pons*, 434 U.S. 575, 580–81 (1978); *see Bragdon v. Abbott*, 524 U.S. 624, 644–45 (1998). Petitioners' reliance on the phrase "any person alleging discrimination" ignores that context. *See United States v. Florida*, 938 F.3d at 1228. That phrase describes who holds the right, not who may enforce it. *Id.* The DOJ sues to vindicate those rights and secure compliance across entire systems. *Id.* Here, in Franklin, where community mental health facilities were shuttered and plaintiffs remained confined to hospitals despite medical determinations that they could be safely treated in the community, the DOJ's systemic enforcement role is indispensable.

The Supreme Court confirmed the breadth of this enforcement design in *Barnes*, holding that Title II's remedies are "coextensive" with those available under the Rehabilitation Act and Title VI. 536 U.S. at 185–87. That holding forecloses Petitioners' attempt to slice away federal enforcement authority. Because Title VI's remedial scheme has always encompassed DOJ litigation, *Barnes* makes clear that Title II does as well. *Id.* The DOJ's request here for injunctive relief is precisely the kind of systemic equitable remedy Congress envisioned: one that individual plaintiffs alone cannot obtain. If Title II were limited to private suits, it would collapse into a weaker regime than the statutes Congress expressly borrowed from. *See id.* That outcome would leave Petitioners' statewide practices, such as closing facilities, ignoring legislative appropriations, and forcing individuals like Ms. Kilborn, Mr. Torrisi, and Mr. Williamson to languish in institutions, beyond the reach of the only enforcer capable of obtaining comprehensive reform: the DOJ.

1. § 12133 incorporates the Rehabilitation Act and Title VI, which have always included DOJ enforcement authority.

The plain language of § 12133 directs courts to the enforcement scheme of the Rehabilitation Act and, through it, Title VI of the Civil Rights Act. § 12133 of Title II provides that the remedies available for Title II violations are those set forth in § 505 of the Rehabilitation Act, which is the Act's enforcement provision for § 504. 42 U.S.C. § 12133. § 505(a)(2) in turn adopts the "remedies, procedures, and rights set forth in Title VI of the Civil Rights Act of 1964. 29 U.S.C. § 794a(a)(2).

Title VI's § 602 requires agencies to effectuate nondiscrimination obligations "by issuing rules" and, if necessary, to enforce those rules "by the termination of funds" or "**by any other means authorized by law.**"42 U.S.C. § 2000d-1 (emphasis added). For decades before the ADA's passage, courts have construed this provision to permit DOJ lawsuits against noncompliant recipients of federal funds. *See Adams,* 480 F.2d at 1162 (recognizing DOJ's duty to sue under Title VI where agency efforts failed); *Cannon*, 441 U.S. at 705 n.38 (1979) (explaining Title VI contemplates judicial enforcement at the instance of the United States).

Congress legislated with this background in mind. By the time it enacted Title II in 1990, the DOJ had already used this authority for decades, and courts had accepted its role without hesitation. *See, e.g., United States v. Baylor Univ. Med. Ctr.*, 736 F.2d 1039, 1042–43 (5th Cir. 1984) (recognizing DOJ's enforcement role under Title VI); *United States v. Marion Cnty. Sch. Dist.*, 625 F.2d 607, 609–10 (5th Cir. 1980) (same); *compare with United States v. Miami Univ.*, 294 F.3d 797, 808 (6th Cir. 2002) (concluding that similar "any other action authorized by law" language

permitted the Secretary of Education to sue to enforce the Family Educational Rights and Privacy Act). Congress is presumed to adopt this settled interpretation when it imports a statutory scheme by reference. *Lorillard*, 434 U.S. at 580–81; *see Bragdon*, 524 U.S. at 644–45 (1998). Congress adopts a cluster of ideas attached to a statutory language when it incorporates it. *Lorrilard*, 434 U.S. at 580. When Congress deliberately chose to adopt the "remedies, procedures, and rights" language for Title II, it knowingly adopted the cluster of ideas that is explicitly cross-referenced in § 505 of the Rehabilitation Act and Title VI. *Id.* The Court has stated numerous times that "Congress says in a statute what it means and means in a statute what it says there." *Hartford Underwriters Ins. Co. v. Union*, 530 U.S. 1, 6 (2000). To conclude otherwise would mean Congress imported only part of the borrowed statutes, stripping away the enforcement component that gave them meaning. Courts have repeatedly rejected such selective readings. *See Consol. Rail Corp. v. Darrone*, 465 U.S. 624, 625 (1984) (holding the Rehabilitation Act's remedies parallel those of Title VI). Thus, when Congress incorporated Title VI remedies into Title II, it necessarily incorporated the DOJ's longstanding enforcement authority.

Petitioners' reliance on the phrase "any person alleging discrimination" in § 12133 is misplaced. The phrase identifies beneficiaries of the right, not who may enforce it. *Florida*, 938 F.3d at 1228. The Eleventh Circuit has already clarified this point, explaining that the DOJ does not sue as a "person alleging discrimination" but instead vindicates the rights of such persons by invoking the remedies Congress provided. *Id.* Other civil rights statutes follow the same pattern. Title VII guarantees

relief to an "aggrieved person," 42 U.S.C. § 2000e-5(f)(1), but also authorizes the EEOC to sue independently. *See Gen. Tel. Co. v. EEOC*, 446 U.S. 318, 326 (1980). The Fair Housing Act likewise provides remedies for "aggrieved persons," 42 U.S.C. § 3613, while granting the Attorney General separate authority to bring pattern-or-practice suits. 42 U.S.C. § 3614(a). And in the FERPA context, the Sixth Circuit proceeded with finding that granting rights to "parents or students" did not exclude government enforcement, because Congress also authorized "**other action authorized by law**." *Miami Univ.*, 294 F.3d at 808 (emphasis added). In each of these contexts, Congress used "person" language to describe who holds the right, not to bar agency enforcement.

Congress's intent to include DOJ enforcement is also evident in the ADA's purposes clause, which declares that "the Federal Government plays a central role in enforcing the standards established in this chapter." 42 U.S.C. § 12101(b)(3). Congress knew how to draft different enforcement models, as shown in the ADA itself: Title I incorporates Title VII's EEOC framework, § 12117; and Title III explicitly authorizes the DOJ to bring pattern-or-practice actions, § 12188(b). Congress deliberately chose to anchor Title II's enforcement in the Title VI/Rehabilitation Act model—one that had always included DOJ litigation. *See Russello v. United States*, 464 U.S. 16, 23 (1983) (reasoning when Congress uses different language in different provisions, courts presume it acts intentionally).

Additionally, Petitioners' interpretation would leave Title II with a single enforcement pathway: private suits. That result would defy both text and logic. If the

DOJ were barred from suing, § 12133 would do nothing more than recognize an implied private right of action, which is something courts are reluctant to create absent clear congressional intent. *See Alexander v. Sandoval*, 532 U.S. 275, 287–88 (2001). Congress, however, went out of its way to incorporate a pre-existing scheme that already included government enforcement. Florida, 938 F.3d at 1228. To reduce § 12133 to a private right alone would render Congress's cross-references meaningless and collapse Title II's remedies into something weaker than those of Title VI itself. *Id.*

Here, these statutory cross-references Congress embedded in Title II fit the facts of this case exactly. Respondents were each determined by their treating physicians to be appropriate for transfer to community mental health facilities. Yet, because Petitioner closed two facilities in 2011 and eliminated inpatient care at its only remaining community facility in Platinum Hills, they remained institutionalized for years. This is the precise systemic failure the DOJ has always been empowered to redress. When Congress imported Title VI's remedial scheme into § 12133, it incorporated the DOJ's established authority to step in where administrative efforts fail. The DOJ followed that model here: after Petitioner shuttered facilities and ignored the Legislature's later budget increase, the DOJ conducted a Civil Rights Division investigation, concluding Petitioner was violating Title II, and then sought intervention in this lawsuit. If the DOJ could not sue, Petitioners' statewide practices would evade meaningful review and private plaintiffs can only seek relief for themselves. Congress designed Title II's enforcement scheme to prevent that gap and

allow the DOJ to protect the rights of individuals at risk of unnecessary institutionalization across an entire state.

Because Congress incorporated Title VI's full remedial scheme into § 12133, including DOJ enforcement, the Attorney General may sue to enforce Title II. That authority gives the United States a protectable interest under Rule (24)(a)(2). The court of appeals correctly held as much, and this Court should do the same.

2. *Barnes v. Gorman* confirms that Title II's remedies are coextensive with those statutes.

The Supreme Court of the United States has already resolved that the remedies available under Title II are "coextensive" with those available under Title VI and the Rehabilitation Act. *Barnes*, 536 U.S. at 185. In *Barnes*, the Court rejected an effort to distinguish the ADA's enforcement mechanisms from its statutory predecessors, holding instead that Congress deliberately linked Title II to Title VI and the Rehabilitation Act so that courts would apply the same remedial framework. *Id.* at 185–86. There, a wheelchair user sued a city and private medical transport company under Title II of the ADA and § 504 of the Rehabilitation Act, alleging he was denied appropriate transport after an arrest. *Id.* at 183–84. A jury awarded him compensatory damages and punitive damages. *Id.* at 184. The defendants challenged the punitive award, arguing that such damages were not available as remedies under either statute. *Id.* The question before the Court was whether punitive damages are available in private actions under Title II and the Rehabilitation Act, given that those statutes incorporate Title VI's enforcement scheme. *Id.* at 183.

The Court held unanimously that punitive damages are not available. *Id.* at 189. In reaching this conclusion, the Court explained that remedies under Title II are "coextensive with the remedies available in a private cause of action under Title VI." *Id.* at 185. Because Title VI does not allow punitive damages, neither do the ADA or the Rehabilitation Act. *Id.* at 187. This linkage, the Court explained, means courts must treat Title II's remedial scheme as identical to Title VI's, unless Congress expressly provides otherwise. *Id.* The Court rejected the idea that courts could pick and choose portions of Title VI to import; Congress tied the statutes together wholesale. *Id.* at 185–86. That reasoning is categorical: all remedies and procedures available under Title VI carry into Title II.

Barnes thus stands for the proposition that DOJ enforcement is included in Title II. *Id.* Title VI's remedial scheme has always encompassed federal government litigation, as recognized in other cases. *See Adams*, 480 F.2d at 1162 (duty to sue where compliance efforts fail); *Cannon*, 441 U.S. at 705 n.38 (judicial enforcement "at the instance of the United States"). When the Court in *Barnes* held that Title II remedies are "coextensive" with those statutes, it necessarily carried forward the DOJ's authority to enforce them. *Id.* That conclusion forecloses Petitioners' argument that DOJ is somehow excluded. To hold otherwise would contradict congressional intent when it so clearly intended identical enforcement mechanisms.

The plain language of § 12133 confirms this reading. It incorporates not just "remedies," but also the "procedures" and "rights" set forth in § 505 of the Rehabilitation Act and Title VI. 42. U.S.C. § 12133. Title VI's "procedures" include

the agency enforcement track that culminates in referral to the DOJ for litigation under the "any other means authorized by law" clause. 42 U.S.C. § 2000d-1; *see e.g., Nat'l Black Police Ass'n v. Velde*, 712 F.2d 569, 575 (D.C. Cir. 1983) (holding that "referral of cases to the Attorney General, who may bring an action against the recipient," is one of the "other means authorized by law"). Title VI's "remedies" include the equitable relief traditionally obtained in such government enforcement suits. *Adams*, 480 F.2d at 1162. And Title VI's "rights" include the right to be free from discrimination and the right to have those protections enforced by federal officials. *See Cannon*, 441 U.S. at 705 n.38. By using the triad of "remedies, procedures, and rights," Congress ensured that the entire Title VI scheme—including DOJ enforcement—would be incorporated, not just the private right of action. *Florida*, 938 F.3d at 1228; *see* generally, *Barnes*, 536 U.S. at 186. *Barnes* solidifies this linkage is entirely comprehensive. *Id.*

Moreover, limiting Title II to private enforcement would contradict *Barnes*'s mandate of uniformity. *Id.* It would create the anomaly of Title II being weather than Title VI or the Rehabilitation Act, despite Congress's express purpose of strengthening protections for individuals with disabilities. *See* 42 U.S.C. § 12101(b)(1)–(3) (calling for "clear, strong, consistent, and enforceable standards" and a "central role" for the federal government). Petitioners' reading would leave Title II resting on nothing more than an implied private right of action, which stands in direct contradiction to one of Title II's cross-references—the Rehabilitation Act—recognizing that where there was an implied private right of action, there also

contained an **administrative enforcement scheme.** *See Miener v. Missouri*, 673 F.2d 969, 978 (8th Cir. 1982); *Pushkin v. Regents of Univ. of Colo.*, 658 F.2d 1372, 1381 (10th Cir. 1981); *Camenisch v. Univ. of Tex.*, 616 F.2d 127, 133–34 (5th Cir. 1980, *vacated on other* grounds, 451 U.S. 390; *Kling v. Los Angeles Cty.*, 633 F.2d 876, 879 (9th Cir. 1980); *NAACP v. Med. Ctr., Inc.,* 599 F.2d 1247, 1254–55, 1258 (3d Cir. 1979). Thus, both the plain text of § 12133 and the Supreme Court's reasoning in *Barnes* establish that Title II's remedies, procedures, and rights are coextensive with those of Title VI and the Rehabilitation Act. That includes DOJ's enforcement authority. To hold otherwise would not only defy statutory language and congressional intent, but also collapse Title II into a regime weaker than its predecessors—precisely the outcome Congress sought to avoid.

In the present case, the remedial linkage recognized in *Barnes* is analogous. Just as *Barnes* rejected attempts to slice Title II away from its statutory predecessors, the United States' claim here reflects the coextensive remedies Congress intended. Plaintiffs seek injunctive relief to end Petitioners' practice of segregating individuals in hospitals when community placements are appropriate. The DOJ's intervention amplifies that remedial scheme, asking not just relief for three individuals but for systemic reform ensuring community-based alternatives are available statewide. To allow Petitioner to escape federal enforcement would render Title II weaker than Title VI or § 504, even though Congress declared the ADA's purpose was to strengthen protections and give the federal government a central role. In sum, the DOJ's intervention here exemplifies the kind of equitable systemic relief that Congress

meant to preserve when it tied Title II's remedies to Title VI. The appellate court properly applied that principle in recognizing the DOJ's authority. At a minimum, its conclusion was not clearly erroneous, and this Court should affirm.

B. Precedent and Practice Establish the Attorney General's Authority to Sue.

Precedent confirms what the statutory text and *Barnes* already establish: the Attorney General may enforce Title II. The Eleventh Circuit is the only appellate court to squarely address the issue, and in *United States v. Florida* it held that Congress imported the entire enforcement scheme of Title VI into Title II, including the federal government's ability to sue. 938 F.3d at 1241–42. The court recognized that the DOJ's institutional role was necessary to remedy violations that individual plaintiffs could never reach. *Id.* at 1230. The Eleventh Circuit relied not only on Title II's cross-references, but also on Congress's delegation of regulation authority to DOJ, 42 U.S.C. § 12134(a), and on committee reports from Congress. That reasoning fits Petitioners' situation: Kilborn, Torrisi, and Williamson were each cleared for community-based care but remained institutionalized because Petitioner closed facilities, failed to reopen them even after legislative appropriations, and left half a million residents more than two hours from any option. As in *Florida*, only the DOJ has the capacity to secure systemic reform.

Other precedent and longstanding practice confirm this conclusion. In *United States v. City & County of Denver*, the court rejected the argument that the DOJ lacked authority and held that the Attorney General has standing to enforce the ADA under Title II. 927 F. Supp. 1397, 1400–01 (D. Colo. 1996). In another case, DOJ sued

the state over its mental health system, and the court denied dismissal and allowed the case to proceed, recognizing DOJ's enforcement role under Title II. *United States v. Mississippi*, 400 F. Supp. 3d 546, 549–50 (S.D. Miss. 2019). Other courts adjudicated the DOJ's Title II claims on the merits without ever questioning its authority. *See e.g. United States v. New York City Transit Authority*, 97 F.3d 672 (2d Cir. 1996). No appellate court has ever held otherwise, and for over thirty years, courts have accepted DOJ suits as routine. Petitioners' resistance to DOJ intervention is inconsistent with this consensus.

1. The Eleventh Circuit squarely held that DOJ may sue under Title II.

United States v. Florida is the only appellate decision to decide the precise question presented here, and it does so in terms that leave no doubt the Attorney General may enforce Title II in federal court. 938 F.3d at 1221. The case arose from a systemic challenge to Florida's administration of its Medicaid program for children with complex medical needs. *Id.* at 1224–25. The United States alleged that Florida's policies and practices resulted in the unnecessary institutionalization of these children in nursing facilities, rather than providing services in the most integrated setting appropriate to their needs, in violation of Title II's integration mandate as recognized in *Olmstead v. L.C.*, 527 U.S. 581 (1999). *Id.* at 1225. Florida moved to dismiss, asserting that Title II authorizes only private suits and gives the Attorney General no cause of action. *Id.* The district court initially denied dismissal but later reversed course and dismissed for lack of authority; the United States appealed. *Id.* at 1226–28.

The issue before the Eleventh Circuit was whether Congress authorized the United States to file suit to enforce Title II. *Id.* The court answered yes and reversed, holding that Congress imported the entire enforcement scheme of Title VI into Title II, including the federal government's ability to sue." *Id.* at 1241–42. In other words, the Attorney General may bring a civil action to compel compliance with Title II. *Id.*

The court's reasoning proceeded from the statutory architecture Congress chose and culminated in a clear statement of federal enforcement authority. *Id.* First, the panel traced the enforcement cross-references that Congress wrote into Title II. *Id.* at 1227–29. § 12133 provides that "remedies, procedures, and rights" available for violations of Title II are those set forth in § 505 of the Rehabilitation Act; § 505(a)(2) in turn incorporates the "remedies, procedures, and rights" of Title VI of the Civil Rights Act. *Id.* at 1238. Title VI's § 602 directs federal agencies to effectuate compliance by promulgating rules, by terminating federal funds after notice and hearing, or "by any other means authorized by law." *Id.* at 1227; 42 U.S.C. § 2000d-1. Decades of decisions had read that last phrase to include referral to the DOJ for litigation when administrative measures failed. *See Adams*, 480 F.2d at 1162; *Cannon*, 441 U.S. at 705. Legislating against that settled backdrop, Congress chose not to draft a novel Title II enforcement code; it imported an existing code that already paired agency oversight with DOJ litigation. *Id.* The Eleventh Circuit therefore read § 12133 as carrying forward not only private remedies, but also the government's litigation authority that is part and parcel of the incorporated Title VI scheme. *Id.*

Second, the court emphasized Congress's structural choice to entrust the Attorney General with Title II rulemaking. *Id.* at 1238–39. § 12134 directs that the Attorney General "shall promulgate regulations" implementing Title II. 42 U.S.C. § 12134(a). The panel explained that it would make little sense for Congress to require DOJ to issue binding rules that govern every state and local public entity while denying DOJ the authority to enforce those rules in court. *Id.* at 1241. While one case suggests that Congress did not intend to incorporate any provisions from the Rehabilitation Act into Title II, that presented a "very different issue than the one presented here." *Id.* at 1240 (discussing *Elwell v. Oklahoma ex rel. Bd. Of Rgeents of Univ. of Okla.*, 693 F.3d 1303, 1313 (10th Cir. 2012). *Elwell* considered employment discrimination claims against public entities, and in fact, pointed out that "Congress adopted the Rehabilitation Act's procedural rights in Title II, rather than its substantive provisions on employment discrimination." Florida, 938 F.2d at 1240 (paraphrasing *Elwell*, 693 F.3d at 1313). That textual delegation thus functions as an additional indicator of litigation authority, because whether the Attorney General may sue is a procedural issue. *Id.* Congress expected the same actor that designs the implementing standards to be able to secure compliance with them. *Id.* The United States, as enforcer of national standards, is uniquely positioned to obtain relief that changes state policy, ensures future compliance, and protects individuals who are not before the court. *Florida*, 938 F.3d at 1242–43.

Third, the Eleventh Circuit's reading is consistent with Congress's own account of how Title II enforcement is supposed to work. Committee Reports from

both chambers explain that when administrative efforts fail, the major federal enforcement sanction for Title II violations is referral to the Department of Justice so that the Attorney General may file suit in federal district court. *See* H.R. Rep. No. 101–485, pt. 2, at 98 (1990); S. Rep. No. 101–116, at 56 (1989). Those reports mirror the very structure Congress incorporated from Title VI's § 602—agency rules, administrative process, and, as the backstop, litigation by "other means authorized by law." 42 U.S.C. § 2000d-1. They also harmonize with the ADA's purpose clause, which states that "the Federal Government plays a central role in enforcing the standards established in this chapter." § 12101(b)(3).

Applying this reasoning to the case before it, the Eleventh Circuit concluded that the United States' suit against Florida was properly brought under Title II and should not have been dismissed for lack of authority. 938 F.3d at 1241–42. The court's analysis rests on Congress's chosen text and structure, not on judicial intervention. *Id.* Congress linked Title II to § 505 and Title VI; Title VI supplies an enforcement framework that includes DOJ litigation; § 12134 assigns DOJ the task of promulgating Title II regulations; the ADA's legislative history identifies referral to DOJ for suit as the ultimate sanction. Those features together confirm that the Attorney General may file suit to enforce Title II. *Id.* at 1238–42; 42 U.S.C. §§ 12101(b)(3), 12133, 12134(a); 29 U.S.C. § 794a(a)(2); 42 U.S.C. § 2000d-1; H.R. Rep. No. 101-485, pt. 2, at 98; S. Rep. No. 101–116, at 56.

The Eleventh Circuit's reasoning in *Florida* mirrors the situation in Franklin. In *Florida*, the DOJ challenged statewide policies that unnecessarily institutionalized

children in nursing facilities. Here, the DOJ challenges Petitioners' systemic failure to maintain and fund community mental health facilities, which left Kilborn institutionalized two years past her physician's recommendation, forced Torrisi to remain in a hospital because no inpatient program existed, and required Williamson to stay at FSUH despite readiness for community placement. Just as the Eleventh Circuit held that DOJ must be able to enforce Title II because only the federal government can remedy such systemic policies, DOJ's presence here ensures that Petitioner addresses statewide practices affecting hundreds of thousands of residents. The Attorney General promulgated the very regulations at issue, including the integration mandate in 28 C.F.R. § 35.130(d) that requires a "public entity [to] administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." It would be irrational for Congress to require the DOJ to issue those regulations while barring the DOJ from enforcing them. The Committee Reports reflect this design: when administrative efforts fail, DOJ litigation is the "major enforcement sanction" Congress envisioned.

This treatment of *Florida* gives the Court a complete, precedent-based answer to Petitioners' theory. Title II's enforcement was built by Congress to track Title VI's; the Attorney General is both the regulator and the litigating backstop; and Congress itself describes referral to DOJ as the major sanction in Title II matters. Therefore, the United States possesses a direct statutory interest sufficient to intervene as of

right under Rule 24(a)(2); the Twelfth Circuit Court of Appeal's conclusion was not clearly incorrect, and this Court should affirm.

2. Other Courts Have Consistently Upheld DOJ's Authority to Enforce Title II, and No Appellate Court Has Ruled Otherwise

The Eleventh Circuit's holding in *United States v. Florida* is supported by a wide body of judicial authority and practice. No appellate court has ever adopted the contrary reading urged by Petitioner that the DOJ is barred from suing under Title II. To the contrary, courts across the country have routinely and without question entertained such suits, and several have expressly upheld the DOJ's enforcement role.

For example, in *United States v. City and County of Denver*, the DOJ filed suit against Denver and its police department, alleging it violated Title II by failing to provide effective communication and equal access for deaf individuals in interactions with law enforcement. 927 F. Supp. at 1397. The defendants moved to dismiss, arguing as *Florida* argued, that the DOJ lacked authority to sue under Title II. *Id.* at 1398–99. The court rejected that argument outright. *Id.* It explained that § 12133 incorporates § 505 of the Rehabilitation Act, which in turn incorporates Title VI, and that Title VI has always been enforced by the federal government through litigation. *Id.* at 1400–01. The court concluded that the Attorney General has authority to enforce the ADA under Title II, reasoning that to hold otherwise would deprive the statute of the very enforcement mechanism Congress carried over. *Id.* at 1401. In other words, the *Denver* court adopted precisely the reasoning the Eleventh Circuit would later use in *Florida*. The case is significant not only because it upheld DOJ's

authority, but because it did so in the early years after the ADA's enactment, showing that courts understood from the start that DOJ had a role to play in Title II enforcement.

Other district courts have reached the same conclusion. In one court, the Attorney General challenged the State of Mississippi's mental health system for unnecessarily institutionalizing individuals with serious mental illness. *Mississippi*, 400 F. Supp. 3d at 546. The State argued that DOJ lacked the authority to sue, but the court denied the motion, recognizing DOJ's role under Title II and allowing the case to proceed to trial. *Id.* at 549-50. Similarly, a court considered DOJ's Title II claims on the merits without questioning its authority, implicitly recognizing the federal government's enforcement role. *New York City Transit Auth.*, 97 F.3d at 672; *see also United States v. Morvant*, 843 F.Supp. 1092 (E.D. La. 1994) (adjudicating DOJ's Title II claim against a parish government without hesitation, again treating DOJ as a proper plaintiff).

This consistent line of cases demonstrates that courts have not merely tolerated DOJ suits, but have adjudicated them as an ordinary and expected part of Title II enforcement. Some courts, like *Denver* and *Mississippi*, have addressed the question explicitly and upheld the DOJ's authority. Others, like *New York City Transit Authority* and *Morvant*, have proceeded directly to the merits, reflecting an understanding that DOJ enforcement is settled law.

Petitioners' can point to no contrary appellate precedent. *Florida* is the only circuit decision to decide the question, and it affirms the DOJ's authority. This

unbroken line of precedent is demonstrated by thirty years of DOJ practice: since 1990, the Department has filed dozens of Title II enforcement suits across the country, resulting in injunctions, consent decrees, and settlements. *See North Carolina Department of Adult Correction*, CIV. RTS. DIV., U.S. DEP'T OF JUST (last updated Aug. 29, 2025), https://www.justice.gov/crt/case/north-carolina-department-adult-correction. Courts have accepted those suits as consistent with the statute Congress enacted (showing a DOJ Title II lawsuit settling in August 2025).

Here, other courts' acceptance of DOJ suits under Title II reinforces DOJ's role in this case. In *Denver*, DOJ sued a police department for failing to accommodate deaf individuals; in *Mississippi*, DOJ sued the state's mental health system for unnecessary institutionalization; and in *Morvant*, DOJ sued a parish government over Title II violations. DOJ had authority to sue in all. Like those cases, Petitioners' violations are systemic and cannot be remedied piecemeal. Kilborn, Torrisi, and Williamson's experiences are not anomalies; rather, they exemplify a statewide policy decision to close facilities and deny community placements despite legislative appropriations. Respondents' individual claims cannot secure relief for the 550,000 Franklin residents who live more than two hours from the only community mental health facility, or for future patients whose physicians will again recommend community treatment only to find no viable options. DOJ's institutional interest is to protect those systemic rights nationwide.

Taken together, this case law and practice confirm what *Florida* made explicit: the Attorney General has long been understood to have enforcement authority under

Title II. That understanding has never been seriously doubted by the judiciary. Because DOJ may bring suit under Title II, it has an interest in this case adequate to justify intervention under Rule 24(a)(2), and this Court should affirm.

CONCLUSION

The plain language of Title II of the ADA, its regulations, and court precedent necessitate that its protections extend to individuals at risk of institutionalization or segregation. The lower courts gave proper deference to the DOJ's interpretation that individuals at risk of unjust institutionalization or segregation can maintain a claim for discrimination. Taken together, the plain statutory language, the Supreme Court's guidance in *Barnes*, the Eleventh Circuit's precedent in *Florida*, and the consistent judicial practice across jurisdictions establish that the United States has the authority to enforce Title II in court, which gives it an interest sufficient to intervene as of right under Rule 24(a)(2). Because the Twelfth Circuit Court of Appeals was not clearly incorrect, the Court should affirm.

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

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT