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 PETITIONERS

TEAM 3408

Attorneys for Petitioner

QUESTIONS PRESENTED

I. Under Title II of the Americans with Disabilities Act, does a person merely at risk of institutionalization and segregation in a hospital qualify to bring a Title II claim when they are currently not institutionalized or segregated?

II. Under Federal Rule of Civil Procedure 24(a)(2), does the Department of Justice have an interest relating to the subject matter of a private Americans with Disabilities Act action and the authority to intervene to enforce Title II of the Act?

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The unreported Opinion of the United States District Court for the District of Franklin, *Sarah Kilborn, et al. v. The State of Franklin Department of Social and Health Services, et al.*, Case No. 1:22-cv-00039 (June 29, 2022), is contained in the Record of Appeal at Pages 1-21, where the District Court GRANTED the United States' motion to intervene and DENIED Defendants' motion for summary judgment. The unreported Opinion of the United States Court of Appeals for the Twelfth Circuit, *The State of Franklin Department of Social and Health Services, et al. v. Sarah Kilborn, et al.*, 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 decision in its entirety.

STATUTORY PROVISIONS INVOLVED

This case involves two provisions of the United States Code 42 U.S.C. § 12132 and 42 U.S.C. § 12133.

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

This case revolves around three Respondents, Sarah Kilborn, Eliza Torrisi, and Malik Williamson (collectively the "Respondents") bringing a Title II claim under the Americans with Disabilities Act ("ADA"). The United States District Court ruled in favor of the Respondents and the Department of Justice ("DOJ"), granting their motions for summary judgment and denying the Petitioner's motions for summary judgment. At trial, the district court concluded that the Respondents

can maintain a Title II claim. The Twelfth Circuit Court of Appeals affirmed the district court's ruling. This case is now brought to the U.S. Supreme Court for review.

Differences Between Community Facilities and Hospitals. Both patients in community mental health facilities and hospitals receive mental health services but the level of restriction differs significantly. R. at 13. The community health facilities in Franklin provide daily treatment in a setting that supports community integration. R. at 13. In contrast, hospitalized patients are unable to live at home, maintain employment, or carry out their daily activities. R. at 13. While each Respondent opted out of transferring to a community mental health facility due to accessibility constraints, each Respondent received medically necessary treatment at State Hospitals and was eventually cleared for release. R. at 12. The Respondents are currently not institutionalized. R. at 12.

The Respondents have a long history of inpatient hospital treatment due to their mental health disorders. R. at 12. Kilborn and Torrisi have been diagnosed with bipolar disorder, while Williamson has been diagnosed with schizophrenia. R. at 12. Although each had the option to transfer to Franklin's state-operated community mental health facility, they instead received treatment at state hospitals based on their individual circumstances and the recommendations of their physicians. R. at 12.

Sarah Kilborn. Kilborn voluntarily sought hospital admission in 2002 due to severe depressive episodes, despite her physician advising treatment in a

community mental health facility. R. at 12. In 2004, Kilborn was released from Southern Franklin Regional Hospital located in Silver City, Franklin, after her treating physician determined she was no longer at risk of harming herself due to her bipolar disorder. R. at 12. In 2011, Kilborn was re-admitted to Southern Franklin Regional Hospital for continued severe bipolar episodes. R. at 13. Although Kilborn's treating physician recommended she be transferred to a community mental health facility for daily treatment services in 2013, Kilborn chose not to transfer to a community health facility. R. at 13. Kilborn's options for mental health treatment included a state-operated community mental health facility located outside Silver City and a privately operated community facility within the area, both of which she chose not to utilize. R. at 13. Given Kilborn's decision not to enroll in a community mental health facility, her physician advised that she remain institutionalized at Southern Franklin Regional Hospital until she was well enough to be released. R. at 13. While Kilborn was released in 2015, she voluntarily admitted herself to Southern Franklin Regional Hospital again in October 2018. R. at 13. Once again, Kilborn's physician stated she could be released to a community mental health facility, but Kilborn chose to stay at South Franklin Regional Hospital until she was released in January 2021. R. at 13. Kilborn is not currently institutionalized. R. at 13.

Eliza Torrisi. Torrisi's parents admitted Torrisi to Newberry Memorial Hospital in Golden Lakes, Franklin, due to severe manic episodes caused by her bipolar disorder. R. at 14. During her inpatient treatment, Torrisi's manic episodes

stabilized, and her treating physicians determined she could receive inpatient treatment at a community mental health facility. R. at 14. Torrisi's options for mental health treatment included a state-operated community mental health facility located outside of Golden Lakes (located in Platinum Hills) or inpatient treatment at Newberry Memorial Hospital. R. at 14. While the state-operated community mental health facility in Platinum Hills did not have inpatient treatment, the Newberry Memorial Hospital offers the same treatment Torrisi would be receiving: a 24-hour supervised inpatient program. R. at 14. Torrisi chose to stay at Newberry Memorial Hospital and was released in May 2021 after her manic episodes stopped. R. at 14. In August 2021, after one manic episode, Torrisi returned to the hospital, but was released in January 2022. R. at 14. Torrisi is not currently institutionalized. R. at 14.

Malik Williamson. Williamson's daughter and guardian admitted him to Franklin State University Hospital in Platinum Hills in 2017 after receiving various treatments at several hospitals due to hallucinations and delusions that threatened himself, family members, and others. R. at 14. After two years of treatment, his physician determined he was eligible to transfer to a community mental health facility. R. at 15. Williamson's options for mental health treatment included a state-operated community health facility without inpatient care in Platinum Hills or a privately operated community mental health facility outside of Platinum Hills. R. at 15. On his physician's recommendation, Williamson stayed at Franklin. R. at 15. Williamson's decision to remain at Franklin State University

Hospital was not solely due to medical need but also to be closer to his family. R. at 15. Williamson's daughter had initially selected Franklin State University Hospital because it was located only a few miles from their home. R. at 15. Williamson was released from Franklin State University Hospital in 2021 and was told he could receive outpatient care at the State's community mental health facility. R. at 15. Williamson is not currently institutionalized. R. at 15.

Budget Cuts and Geographic Barriers. The Franklin Department of Health and Social Services ("Franklin") previously maintained two community mental health facilities located near the Respondents' homes. R. at 15. However, both facilities were closed after the legislature reduced funding for Franklin by twenty percent. R. at 15. In 2021, the State's legislature increased Franklin's budget by five percent, but they have not made a decision yet as to re-opening the Mercury or Bronze community mental health facilities. R. at 16. The inpatient program at Franklin's existing community mental health facility located in Platinum Hills was also eliminated for budgetary reasons because it was the most expensive program and served the fewest people. R. at 16. While approximately 550,000 residents live more than two hours away from the State's only community mental health facility in Platinum Hills, the State of Franklin is also one of the largest states in the United States and one of the most sparsely populated states. R. at 15.

II. NATURE OF PROCEEDINGS

Complaint. In February 2022, the Respondents filed a complaint in the United States District Court for the District of Franklin against the State of Franklin Department of Social and Health Services and its Secretary in her official capacity (collectively, the "Petitioners"). R. at 1,15. The Respondents alleged that Franklin's failure to provide adequate state-operated community mental health facilities placed them at risk of future institutionalization, in violation of Title II. R. at 15.

The Intervention. Shortly thereafter, the DOJ announced an investigation into Franklin's compliance with Title II. R. at 2. Following that investigation, the DOJ moved to intervene in May 2022, attaching a proposed complaint that sought sweeping injunctive relief on behalf of all Franklin residents "at risk of being unnecessary institutionalized." R. at 2. The Petitioners opposed the motion, but the district court granted intervention. R. at 10. This decision significantly altered the posture of the litigation: the DOJ's intervention broadened the case to cover the entire State of Franklin. R. at 23. Discovery expanded to include thirty-one depositions and nearly fifty subpoenas, many of which Franklin was forced to move to quash, causing months of additional proceedings. R. at 33. The intervention also foreclosed any realistic opportunity for settlement, as Franklin could no longer negotiate resolution limited to the Respondents. R. at 34.

The Motion for Summary Judgement. The district court then bifurcated the litigation. R. at 24. In the first phase, the parties filed cross-motions for

summary judgment on the threshold legal question of whether individuals merely "at risk" of institutionalization, but not currently institutionalized, may maintain a cause of action under Title II. R. at 24. After briefing and argument, the district court ruled in favor of the Respondents and the DOJ, granting their motions for summary judgment and denying the Petitioners' motions for summary judgment. R. at 24.

The Trial. The case proceeded to a four-week bench trial before Judge Preeda Sathi. R. at 25. The trial featured testimony from nineteen witnesses, including medical experts and Franklin officials. R. at 25. The district court concluded that the Respondents were at risk of future institutionalization and ordered Franklin to: (1) submit a remedial plan within three months and (2) ensure that the Respondents would not be institutionalized "if the three-part test outlined in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999)," is met. R. at 25.

The Twelfth Circuit Court of Appeals. The Petitioners timely appealed, and the district court stayed its remedial order pending appeal. R. at 25. Applying the motion for summary judgment review to the "at risk" inquiry and reviewing the DOJ's intervention under abuse of discretion review, the Twelfth Circuit affirmed. R. at 23-29. It held, first, that the DOJ could intervene as of right under Rule 24(a)(2) to enforce Title II, and second, that individuals "at risk" of institutionalization may maintain a Title II action. R. at 23-29. Chief Judge Hoffman dissented, concluding that the DOJ lacked any right to intervene and that

the expansion of Title II to cover "at risk" individuals was legally erroneous and prejudicial to the State. R. at 30-34.

SUMMARY OF THE ARGUMENT

This Court should reverse the holding of the Twelfth Circuit Court of Appeals. The district court held that Title II extends protections to individuals at risk of institutionalization. Nothing in the statute or precedent supports this expansion, and the DOJ's interpretation of the integration mandate distorts its plain text. The Twelfth Circuit and district court further erred in granting the DOJ's motion to intervene under Rule 24(a)(2). The DOJ's entry was untimely, it lacks a legally protectable interest under Title II, and any relevant interests are already adequately represented by the private plaintiffs. Because both rulings rest on clear legal error, this Court should reverse the lower courts ruling.

I.

This Court should reverse the Twelfth Circuit decision extending Title II protections to individuals at risk of institutionalization.

The Respondents cannot maintain a Title II claim against the State because they are not currently institutionalized. The DOJ promulgated the integration mandate to enforce Title II by requiring that qualified individuals in institutions be transferred to community-based health facilities. However, the DOJ has wrongfully extended protections covered under the integration mandate to include those at risk of institutionalization despite a lack of statutory law or Supreme Court precedent. This interpretation distorts the plain language of the integration mandate, which

serves to extend services in the most integrated setting appropriate, to individuals who are not deprived of community integration. While the DOJ permitted this extension, deference towards their interpretation is only granted when the regulation is ambiguous. The integration mandate clearly states services must be administered to qualified individuals with disabilities, and the Respondents do not qualify for additional services because of their at-risk status. Even if the integration mandate is found ambiguous, it still must be a reasonable interpretation within the agency's expertise. The DOJ's interpretation is not reasonable because it overextends Title II protections to those who do not have legally ripe claims.

Further, this Court should consider the policy ramifications of extending Title II protections to those merely at risk of institutionalization. Individuals with minimal levels of risk for institutionalization could bring lawsuits and flood the courts with frivolous claims. Further, finding remedies for such claims depletes the State's resources to provide comprehensive mental health care for all residents. Thus, this Court should reverse the Twelfth Circuit decision to ensure Title II protections do not extend to individuals at risk of institutionalization.

II.

The Twelfth Circuit incorrectly allowed the DOJ's motion to intervene by applying abuse of discretion, finding that DOJ's motion to intervene is timely and it has sufficient legal interest. Except for the timeliness requirement, this motion to intervene presents legal questions warranting de novo review because it is based on statutory interpretation. *See infra* pp. 13-16. To satisfy Rule 24(a)(2), the DOJ must

show that: (1) its motion to intervene is timely; (2) it has a legally protectable interest relating to the subject matter of the action; (3) it is situated such that disposition of the action may impair that interest; and (4) its interest is inadequately represented by the existing parties. Accordingly, this Court should reverse for four reasons: (1) DOJ's intervention was untimely and prejudicial; (2) DOJ lacks any legally protectable interest under Rule 24(a)(2); (3) absent such a legally protectable interest, there is no risk of impairment; and (4) the private plaintiffs already adequately represent the asserted interests by the DOJ.

First, timeliness is a threshold requirement for Rule 24(a)(2). Intervention that heavily prejudice existing parties and increases costs is untimely. Here, the DOJ's entry stayed a negotiated case plan, reset discovery, transformed a matter scheduled to be resolved in a year to over two years of litigation, and recurred significant attorney's fees, rendering its intervention functionally untimely.

Second, Rule 24(a)(2) requires a legally protectable interest. The DOJ does not have a legally protectable interest under Title II, and its generalized policy concern is insufficient. The DOJ has no legally protectable interest under Title II for five reasons: (1) Congress expressly granted Attorney General enforcement power in Titles I and III but not in Title II, demonstrating a deliberate choice to omit DOJ enforcement; (2) 42 U.S.C. § 12133 reserves "remedies, procedures, and rights" to a "person," which does not include the Attorney General; (3) even assuming authority, the DOJ failed to comply with statutory and regulatory prerequisites; (4) allowing the DOJ to bring Title II claims is detrimental to state sovereignty under

federalism; and (5) converting regulatory duties under section 12134 into litigation power contravenes this Court's separation-of-powers precedents.

Third, Rule 24(a)(2) requires that a proposed intervenor establish a legally protectable interest, and inquires whether a proposed intervenor's rights would be impaired if the court resolves the case without them. As established above, because the DOJ does not have a legally protectable interest, the impairment inquiry is inapplicable to this matter.

Fourth, even if the DOJ has a legally protected interest, intervention should be denied because the DOJ's asserted interests are already fully represented by the existing plaintiffs. This triggers the presumption of adequate representation in Rule 24(a)(2), rendering the DOJ's intervention unnecessary.

Since the DOJ's participation was functionally late, unauthorized, and duplicative, this Court should reverse the decision of the lower courts and hold that intervention as of right was improper and bar the DOJ from intervention.

ARGUMENT AND AUTHORITIES

Standard of Review. The Twelfth Circuit Court of Appeals applied the wrong standards of review. Whether individuals at risk of institutionalization may bring claims under Title II is a legal issue that must be reviewed de novo. Likewise, intervention under Rule 24(a)(2) involves statutory interpretation and should be reviewed de novo on all elements except timeliness. By applying abuse of discretion review to these questions, the Twelfth Circuit departed from the proper standard of review and undermined uniformity in federal law.

I.

The Twelfth Circuit Correctly Reviewed De Novo Whether Individuals At Risk of Institutionalization May Maintain a Claim Under Title II. While the Twelfth Circuit erred in its legal determination, the court correctly reviewed the lower court ruling on cross motions for summary judgment de novo. R. at 29. De novo review applies to statutory interpretations and legal determinations. *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 228 (2020). This standard applies even if such an interpretation is reviewed by an appellate court on a motion for summary judgment. *See U.S. Sportsmen's Alliance Foundation v. Smith*, 3 Wash.3d 743 (Wash. 2024). Multiple courts have emphasized the importance of de novo review as an appellate court's role in establishing coherence in law. *See United States v. Brown*, 631 F.3d 638, 643 (3d Cir. 2011) ("De novo review is favored where there is a need for appellate courts to control and clarify the development of legal principles…."); *Matter of McLinn*, 739 F.2d 1395, 1398 (9th Cir. 1983) ("In our view, a decision to give less than full independent de novo review to the state law determinations of the district courts would be an abdication of our appellate responsibilities.").

This Court should follow the Twelfth Circuit and apply de novo in reviewing motion for summary judgement, because the issue as to whether individuals at risk of institutionalization and segregation may maintain a claim under Title II of the ADA is purely legal. *United States v. Mississippi*, 82 F.4th 387, 391 (5th Cir. 2023).

II.

The Twelfth Circuit Erred in Applying Abuse of Discretion Review Because Statutory Interpretation Requires De Novo Review. The Twelfth Circuit erred by applying abuse of discretion review to the district court's grant of motion to intervene under Rule 24(a)(2). R. at 25. Except for the timeliness requirement, this motion to intervene presents legal questions warranting de novo review because it is based on statutory interpretation. *See Grutter v. Bollinger*, 188 F.3d 394, 398 (6th Cir. 1999). There is an interest in uniformity in federal statutes and regulations, which appellate courts are best equipped to enforce.

De novo review allows the court to make an independent determination of the issues, giving no deference to the lower court's determination. *See United States v. First City Nat. Bank of Houston*, 386 U.S. 361, 368 (1961). In contrast, under abuse of discretion review, the lower court decision will be upheld "unless the ruling is manifestly erroneous." *General Elec. Co. v. Joiner*, 522 U.S. 136, 142 (1997). A judgement is "manifestly erroneous" when it is clearly incorrect, arbitrary, or a misapplication of the law. *See Brody v. Spang,* 957 F.2d 1108, 1115 (3d Cir. 1992).

There is a circuit split on the question of which standard of review to apply for motions to intervene. A majority of circuit courts review such motions for de novo review, with only the timeliness requirement being reviewed under abuse of discretion. *See County of Orange v. Air California*, 799 F.2d 535, 537 (9th Cir. 1986) (applying de novo review for all elements except timeliness); *see also Grutter*, 188 F.3d at 398 (same standard); *see also Gandy v. Bryson*, 799 Fed. App'x. 790, 791

(11th Cir. 2020) (same standard); *see also Sierra Club v. Robertson*, 960 F.2d 83, 85 (8th Cir. 1992) (same standard); *see also United States v. Texas E. Transmission Corp.*, 923 F.2d 410, 413 (5th Cir. 1991) (same standard); *see also Kane County v. United States*, 928 F.3d 877, 889 (10th Cir. 2019) (same standard); *see also Reich v. ABC/York-Estes Corp.*, 64 F.3d 316, 321 (7th Cir. 1995). The minority approach reviews all elements under abuse of discretion review. *See Int'l Paper Co. v. Town of Jay*, 887 F.2d 338, 344 (1st Cir. 1989) (applying abuse of discretion review for all elements); *Am. Lung Ass'n v. Reilly*, 962 F.2d 258, 261 (2d Cir. 1992) (same standard); *see also Harris v. Pernsley*, 820 F.2d 592, 597 (3d Cir. 1987) (same standard); *see also In re Sierra Club*, 945 F.2d 776, 779 (4th Cir. 1991) (same standard).

This Court should apply de novo review because the motion to intervene in this matter is dependent on statutory interpretation and the application of federal regulations. Interpretation of Title II and its application to this motion is not case dependent, but rather a review of a purely legal question. *See Guerrero-Lasprilla*, 589 U.S. at 234 (defining "purely legal question" to include the application of a legal standard to established facts). The First Circuit's rationale that the factual variety of motions to intervene justifies abuse-of-discretion review is not applicable to interpretation of Title II. *See Int'l Paper Co*, 887 F.2d at 344. The Twelfth Circuit erred in following this minority approach by the First Circuit, omitting any reference to the "direct and substantial interest" requirement central to Rule 24(a)(2). R. at 25. Here, whether the DOJ may intervene depends on the

interpretation of Title II of the ADA and determining whether its enforcement provisions extend to the DOJ. Likewise, whether existing parties adequately represent the DOJ's interest relies on the statutory scope of Title II enforcement. Therefore, de novo review of Title II's application to this motion is necessary because Title II interpretation presents legal questions demanding uniform resolution by appellate courts. This Court should adopt the majority approach and evaluate the motion to intervene under the de novo legal standard.

Additionally, this Court should apply the de novo standard of review to create uniformity and set clear standards in the interpretation of federal statutes. *See Ornelas v. United States*, 517 U.S. 690, 697 (1996). This Court has long held that review of state law at the district court level is subject to de novo review. *Salve Regina College v. Russell*, 499 U.S. 225, 231 (1991). De novo review is appropriate in review of state law because independent appellate review of legal issues best serves the goals of doctrinal coherence and judicial administration. *Id.* at 231; *see also U.S. Bank Nat. Ass'n v. The Village at Lakeridge, LLC*, 583 U.S. 387, 396 (2018) ("when applying the law involves developing auxiliary legal principles of use in other cases– appellate courts should typically review a decision de novo."); *see also Miller v. Fenton*, 474 U.S. 104, 114 (1985) ("the Court has been reluctant to give the trier of fact's conclusions presumptive force and, in so doing, strip a federal appellate court of its primary function as an expositor of law"). In this case, because interpretation of Title II is pivotal to the intervention question, ensuring a uniform construction of the statute is essential. De novo review is especially applicable where interpretation

of federal regulations is central to resolving the motion to intervene, as appellate courts ensure uniform application of federal statutes and regulations.

Because interpretation of Title II of the ADA is a pure legal question, this Court should not defer to lower courts' determinations. Instead, this Court should apply the de novo standard of review regarding whether the DOJ may intervene under Rule 24(a)(2) to safeguard consistent application of federal law.

I. UNDER TITLE II OF THE ADA, A PERSON MERELY AT RISK OF INSTITUTIONALIZATION AND SEGREGATION IN A HOSPITAL DOES NOT QUALIFY TO BRING A TITLE CLAIM WHEN THEY ARE CURRENTLY NOT INSTITUTIONALIZED OR SEGREGATED.

Title II of the ADA does not extend to individuals at risk of institutionalization or segregation. Title II of the ADA states 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. Unjustified "segregation" of persons with disabilities is a form of discrimination under the ADA, such that those with mental disabilities are deprived of enjoying community participation to seek medical services, while persons without mental disabilities can seek medical services with community participation. *See* §§ 12101(a)(2), 12101(a)(5).

The integration mandate, issued by the DOJ, is a regulation that implements provisions in Title II. 42 U.S.C. § 12134(a). 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." 28 C.F.R. §

35.130(d) (1998). Institutionalized individuals who lack community integration are qualified individuals with disabilities covered by the integration mandate. *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 607 (1999). States must accommodate institutionalized individuals for community-based treatment when state treatment professionals determine the placement is appropriate, the individuals do not oppose it, and the placement can be reasonably accommodated considering the State's available resources and the needs of others with mental disabilities. *Id.* at 607. If states fail to provide this treatment, institutionalized individuals can maintain a Title II claim. *Id.*

The Respondents cannot maintain a claim for discrimination under Title II of the ADA for three reasons. First, the plain language of Title II and the integration mandate require actual discrimination and does not enumerate the risk of institutionalization as a qualifying condition. Second, the DOJ's guidance document interprets the integration mandate to extend protections to individuals at risk of institutionalization. This is an overextension of the integration mandate's purpose to provide integrated care for institutionalized individuals. Third, such an overextension raises significant concerns, including the potential for individuals with insubstantial risk to pursue Title II claims, as well as the significant economic impact such claims could impose on States. Therefore, this Court should reverse the Twelfth Circuit ruling as individuals at risk of institutionalization cannot maintain a Title II claim.

A. The Respondents Do Not Have a Ripe Claim Because the Plain Language of Title II and the Integration Mandate Require Actual Discrimination.

The Respondents cannot maintain a claim for discrimination based on their at-risk status, because the statutory language in Title II requires that no qualified individual shall be "excluded," "denied," or "subjected to discrimination." 42 U.S.C. § 12132. This language indicates discrimination must be a "definitive harm, not just a 'risk' before legal action is ripe." *See Mississippi*, 82 F.4th at 397; s*ee also Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016).

Similar to the statutory language in Title II, the language used in the integration mandate does not extend to those at risk of institutionalization. While the DOJ issued a guidance document stating that the ADA and *Olmstead* "extend to persons at serious risk of institutionalization or segregation," nothing in the language of the integration mandate itself or in *Olmstead* suggests such an extension of the rule. 527 U.S. at 607. In *Olmstead*, this Court held that the State's failure to transfer institutionalized individuals to a state-run community facility upon their physician's recommendation was a violation of the ADA. *Id.* at 581.

Here, unlike the individuals in *Olmstead*, at the time of filing, none of the Respondents experienced institutionalization that excluded them from community integration. Kilborn was released from the state hospital in January 2021, Torrisi was released in January 2022, and Williamson was released in June 2021. R. at 13-15. While the Respondents may continue to experience challenges in their quality of life due to their mental health conditions, they are not "forced into isolation" in a manner that would warrant the same protections afforded to institutionalized

individuals. *Mississippi*, 82 F.4th at 397. The Respondents are still capable of socialization and community integration, such as being able to see family and participate in daily life activities. Thus, the Respondents were not subjected to actual discrimination at the time of the lawsuit, because being at risk of institutionalization is not a legally ripe claim under Title II.

B. The DOJ's Interpretation of the Integration Mandate is Not Entitled to *Auer* Deference.

While the guidance document on the DOJ's website interprets *Olmstead* as extending to persons at serious risk of institutionalization or segregation, this document should not be given deference. *See* United States 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.*, (Feb. 25, 2020), https://archive.ada.gov/olmstead/q&a_olmstead.htm (last visited Sep. 5, 2025). The guiding document created by the DOJ was "not intended to be a final agency action, has no legally binding effect, and may be rescinded or modified ...." *Mississippi*, 82 F.4th at 393. Although courts can defer to an agency's interpretation of its own regulation—because agencies are often better positioned to "reconstruct [a regulation's] original meaning" when ambiguity arises—this Court has emphasized that such deference is not always appropriate. *Kisor v. Wilkie*, 588 U.S. 558, 567-68 (2019); *Auer v. Robbins*, 519 U.S. 452, 464 (1997). Instead, this Court cautioned against treating *Auer* deference as a "general rule." *Kisor*, 588 U.S. at 573

Here, *Auer* deference does not apply, because the integration mandate is not ambiguous based on the plain text. In *Auer*, the Secretary of Labor was given

agency deference in creating a regulation for exemption from overtime pay. *Auer,* 519 U.S. at 464. This was because the regulation's key language, "subject to" disciplinary salary deductions, could have implied a theoretical possibility of deductions or actual deductions that would alter whether an employee maintained non-exempt status. *Id.* Whereas in this case, the integration mandate states, "a public entity shall *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) (1998) (emphasis added). The word "administer" is not subject to competing interpretations, as its present-tense phrasing makes clear that it refers to the active provision of services to individuals who are currently institutionalized, not those who may face institutionalization in the future. Therefore, the DOJ's interpretation of the integration mandate should not be given *Auer* deference, because the integration mandate is not ambiguous.

Even if the regulation is found to be ambiguous, the courts cannot defer to the agency's interpretation, because it is not a reasonable interpretation to assume the ADA extends to individuals at "prospective risk" of institutionalization. *Mississippi*, 82 F.4th at 393. This Court limits how agencies can interpret regulations so they don't use *Auer* deference to create new rules beyond what Congress intended. *Kisor*, 588 U.S. at 575. The intent of the integration mandate is to provide relief to a protected class by increasing access to services, programs and activities that they would not have otherwise had access to. R. at 17. Extending the regulation to include individuals merely at "prospective risk" of institutionalization

depletes government resources for institutionalized individuals who need additional support. *Mississippi,* 82 F.4th at 393. Here, the Respondents do not need additional support covered by the integration mandate, because they are not cut off from community life or deprived of socialization. Thus, because the ADA clearly states the intent to protect qualified individuals with disabilities and *Olmstead* established institutionalized individuals as a qualified class, the DOJ's extension is not reasonable.

Further, granting the DOJ *Auer* deference contradicts the statutory purpose of the integration mandate and Title II. This Court determined that courts must look at whether the "character and context of the agency interpretation entitles it to controlling weight." *Kisor,* 588 U.S. at 576. The only context for the DOJ's interpretation is its own guidance document that extends the *Olmstead* ruling to those at risk of institutionalization. R. at 18. However, *Olmstead* only applies to institutionalized individuals. 527 U.S. at 562. Because there are no statutes, regulations, or Supreme Court precedent that defines "at risk," deferring to the DOJ's broad interpretation enables individuals with even slight risks to bring a Title II claim. This interpretation dilutes Congress's intent in enacting the ADA and undermines the purpose of the regulation, which is to ensure the provision of integrated services. Moreover, this Court has noted that *Auer* deference narrowly applies given the limitations imposed on agencies. *Kisor*, 588 U.S. at 580. Accordingly, *Auer* deference should not be extended to the DOJ's guidance

document, and individuals merely "at risk" of institutionalization should not be able to maintain a Title II claim on that basis.

C. The Respondents Cannot Bring an At-Risk Claim, Because Their Risk of Institutionalization is Too Hypothetical.

This Court should not adopt DOJ's interpretation that *Olmstead* applies to individuals at risk of institutionalization, because the Respondents' risk is far too hypothetical to require the State to place them in community mental health facilities rather than institutions. Under *Olmstead*, "[u]njustified isolation of people with disabilities is a form of discrimination" under Title II of the ADA. 527 U.S. at 597. Unjustified isolation deprives people with disabilities of the ability to participate in community life, such that it diminishes "activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment." *Id.* at 601. Such harm presupposes actual institutionalization—not the possibility of future placement.

While this Court has yet to define the line determining when an individual is at risk of institutionalization, recognizing "at risk" claims such as the Tenth and Second Circuit Court rulings, would contradict this Court's previous intent in *Olmstead*. *See Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175, 1186 (10th Cir. 2003) (plaintiffs argued that Oklahoma's five-prescription cap placed them at "high risk for premature entry into a nursing home," and the court reasoned that the policy violated the ADA's integration mandate because plaintiffs would be forced into nursing homes to receive prescription coverage); *see also Davis v. Shah*, 821 F.3d 231, 263–64 (2d Cir. 2016) (plaintiffs alleged New York's restrictions on

orthopedic footwear and compression stockings put them at "substantial risk" of requiring institutional care). The Tenth and Second Circuit rulings should not be followed, because recognizing Title II violations based on arbitrary levels of risk would invite frivolous lawsuits premised on speculative harms. *See United States v. Mississippi*, 82 F.4th 387, 392 (5th Cir. 2023) (rejecting extrapolation of a statewide risk of institutionalization from limited survey evidence as too hypothetical).

Further, Franklin did not deprive the Respondents of community mental health facilities. R. at 12-15. Each Respondent had the choice to transfer to a community mental health facility outside their cities. R. at 12-15. Unlike the plaintiffs in *Fisher* and *Davis*, who lost prescription benefits and medically necessary devices they previously relied on, the Respondents never received community-based care to begin with. 821 F.3d at 263; 335 F.3d at 1183. Thus, there was no comparable deprivation of services that would directly increase their risk of institutionalization. R. at 12-15. Without guidelines, individuals with minimal risk of institutionalization could bring Title II claims.

Thus, this Court should follow the Fifth Circuit opinion in *Mississippi*, which held that a ripe claim requires proof of definitive harm, not merely a "prospective risk." 82 F.4th at 393. Likewise, this Court should decline to extend *Olmstead* based on the three Respondents' claims, as doing so would legitimize unripe claims for Title II violations.

D. Geographic and Budgetary Constraints Fundamentally Alter the Services That the Franklin Department of Social and Health Services Provides.

Individuals merely at risk of institutionalization cannot maintain a Title II claim because requiring Franklin to provide community-based services in this case would fundamentally alter its programs. Under *Olmstead*, institutionalized individuals cannot maintain a Title II claim, if the remedy would "fundamentally alter" existing programs. 527 U.S. at 595. In determining whether State programs would experience a fundamental alteration, courts should weigh the cost of providing community-based care, the range of existing services the state provides, and the State's ability to provide services equitably for a large and diverse population of people with mental health needs. *Id.* at 598.

Here, Franklin likely has to rebuild and expand infrastructure to accommodate the Respondents, imposing high costs that exceed reasonable modification expectations. The State legislature already slashed funding for Franklin by 20 percent, forcing the closure of mental health facilities closer to the Respondents. R. at 15. Given that the State was forced to close previous facilities, it would likely impose high burdens on the State to reopen new facilities. Additionally, any consideration to re-open Mercury or Bronze community mental health facilities is subject to legislative action, not judicial intervention. R. at 16. It is outside the bounds of judicial intervention to speculate on how Franklin reallocated their budget after funding cuts. R. at 16.

Further, Franklin, one of the most sparsely populated states, cannot prioritize the Respondents' individual needs and preferences at the expense of other

mentally disabled patients. R. at 15. While approximately 79% of residents live more than two hours away from the State's community mental health facility, it is unclear where facilities could be best located for optimal accessibility for all residents. R. at 15. It is virtually impossible for the State to position new infrastructure in a location that could be accessible to all mentally disabled patients. A decision to create new facilities, after previous closures, cannot be decided upon three litigant's needs. Therefore, Franklin's programs would suffer a fundamental alteration due to budget and geographic constraints only to accommodate the Respondents.

In conclusion, Title II was not intended to extend to individuals at risk of institutionalization. The plain language of the integration mandate does not suggest such an extension. Despite the DOJ's interpretation that Title II does extend to those at risk of institutionalization, their interpretation should not be given deference. Suggesting the ADA can apply broadly to individuals with legally unripe claims contradicts the purpose of the ADA to protect qualified individuals with disabilities. Further, remedying the Respondent's claim would lead to a fundamental alteration of Franklin's mental health services. Thus, this Court should hold that individuals at risk of institutionalization cannot maintain a Title II claim.

II. THE DOJ CANNOT FILE A LAWSUIT TO ENFORCE TITLE II OF THE ADA AND THUS DOES NOT HAVE AN INTEREST RELATING TO THE SUBJECT MATTER OF AN ADA CLAIM UNDER RULE 24(a)(2).

This Court should deny the DOJ's motion to intervene. Under Rule 24(a)(2), on timely motion, courts allow a third party to intervene who 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. Fed. R. Civ. P. 24(a)(2). To satisfy Rule 24(a)(2), a proposed intervenor must show that: (1) its motion to intervene is timely; (2) it has a legally protectable interest relating to the subject matter of the action; (3) it is situated such that disposition of the action may impair that interest; and (4) its interest is inadequately represented by the existing parties. *Wal-Mart Stores*, *Inc. v. Tex. Alcoholic Beverage Comm'n*, 834 F.3d 562, 565 (5th Cir. 2016); *Blount-Hill v. Zelman*, 636 F.3d 278, 283 (6th Cir. 2011); *Illinois v. City of Chicago*, 912 F.3d 979, 984 (7th Cir. 2019); *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003); *Fox v. Tyson Foods, Inc.*, 519 F.3d 1298, 1302-03 (11th Cir. 2008); *Wolfsen Land & Cattle Co. v. United States*, 695 F.3d 1310, 1316 (Fed. Cir. 2012). This Court should reverse the lower court decisions for four reasons: (1) the DOJ's intervention was untimely and prejudicial; (2) the DOJ lacks any legally protectable interest under Rule 24(a)(2); (3) absent such a legally protectable interest, there is no risk of impairment; and (4) the private plaintiffs already adequately represent the asserted interests by the DOJ.

A. The District Court Was Clearly Erroneous in Finding the DOJ's Intervention Timely.

Although questions of law under Rule 24(a)(2) warrant de novo review, timeliness is a fact-intensive inquiry reviewed for clear error. *Grutter*, 188 F.3d at 398. Because the DOJ's intervention disrupted established scheduling, prolonged the litigation, and imposed substantial costs, it was clearly untimely and prejudicial under Rule 24(a)(2). R. at 33.

Timeliness is a "threshold requirement" for intervention as of right. *NAACP v. New York*, 413 U.S. 345, 366 (1973). Courts weigh four factors to determine timeliness: (1) the length of time the movant waited to file; (2) prejudice to existing parties from delay; (3) prejudice to the movant if denied; and (4) unusual circumstances. *MasterCard Intern. Inc. v. Visa Intern. Service Ass'n, Inc.*, 471 F.3d 377 (2d Cir. 2006); *Rotstain v. Mendez*, 986 F.3d 931, 938-39 (5th Cir. 2021); *Grochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 797-98 (7th Cir. 2013).

To supplement two of the factors in determining timeliness: (1) the length of time the movant waited to file; and (2) prejudice to existing parties from delay—in *NAACP*, this Court denied intervention where the case had reached a "critical stage," and intervention would have caused delay and additional burdens. 413 U.S. at 365-68. While in *NAACP*, this Court found the "critical stage" to be nearing final disposition, the same principle applies here as Judge Hoffman noted in the dissent: delay is fatal when intervention disrupts established case management or prejudices the parties. R. at 33. The DOJ argues that because they filed a motion to

intervene three months after the complaint, their intervention was filed before the "critical stage." R. at 16. Yet the consequences of this intervention make it untimely. By three months, the parties had already negotiated and secured a scheduling order for efficient resolution. R. at 33. Yet the DOJ's entry forced the district court to stay the existing parties' scheduling order, issue a new one, and restart discovery management. R. at 33. More consequentially, the DOJ transformed the case from three individual claims into a statewide systemic action, fundamentally resetting the litigation clock. R. at 33. This "late entry" doubled the case's lifespan and foreclosed any realistic opportunity for settlement. R. at 33. Therefore, although this matter is not in the final stage of resolution, the intervention after the three months of lawsuit is nonetheless an intervention during its critical stage.

In *Rotstain*, the Fifth Circuit denied intervention where the intervening party would have necessitated duplicative discovery, extended deadlines, and imposed costs. 986 F.3d at 939. The same prejudice occurred here. Once the DOJ intervened, discovery expanded to thirty-one depositions and forty-eight subpoenas, with seventeen motions to quash. R. at 33. The summary judgment schedule was extended by four months, and the trial took four weeks with nineteen witnesses. R. at 33. This resulted in the Petitioners spending more than $273,000 in additional attorneys' fees and costs. R. at 33.

The DOJ may contend, citing *Cameron v. EMW Women's Surgical Ctr.*, that timeliness is measured from when the intervenors find that the existing party is insufficiently representing the intervenor's interest, not by the age of the case. 595

U.S. 267, 279 (2022). On this view, the DOJ will argue that their motion was timely because they acted promptly once Franklin's violations were confirmed. But many circuit courts have consistently held that the timeliness factor cannot be reduced to when an intervenor discovers the case. *Com. of Pa. v. Rizzo*, 530 F.2d 501, 506 (3d Cir. 1976); *Gould v. Alleco, Inc.*, 883 F.2d 281, 286 (4th Cir. 1989); *Nevilles v. EEOC*, 511 F.2d 303, 305 (8th Cir. 1975); *Alaniz v. Tillie Lewis Foods*, 572 F.2d 657, 659 (9th Cir. 1978). The broader procedural posture and prejudice to existing parties must be considered. *NAACP*, 413 U.S. at 366. The timeliness under Rule 24(a)(2) should be measured by the degree of prejudice the intervention would inflict on the existing parties. *Rotstain*, 986 F.3d at 939. If *Cameron* were adopted to allow the intervenor to subjectively determine timeliness when its interests are not represented, the timeliness requirement would be meaningless and expose existing parties to undue burdens from late and disruptive interventions. 595 U.S. at 279.

The DOJ may also argue under *Berger v. North Carolina State Conf. of the NAACP*, which allowed intervention despite prejudicial concerns and stated that intervention is not prejudicial because federal courts routinely manage complex litigation, and intervention serves judicial efficiency by consolidating related claims, avoiding duplicative lawsuits. 597 U.S. 179, 200 (2022).[1] However, in *Berger*, the concerns about trial management were hypothetical and speculative. 597 U.S. at

[1] Out of more than 300,000 federal civil filings in 2024, approximately 41% involved federal question jurisdiction. *See* United States Courts, *Federal Judicial Caseload Statistics 2024*, https://www.uscourts.gov/data-news/reports/statistical-reports/federal-judicial-caseload-statistics/federal-judicial-caseload-statistics-2024 (last visited Sept 2, 2025). If the *Berger* reasoning were accepted, the DOJ could intervene in nearly half of all federal civil cases whenever federal regulations or guidance are implicated. Such an approach would drain judicial resources and improperly empower the executive branch to insert itself into litigation far beyond what Congress intended.

199-200 (the existing parties worried that allowing the legislative leaders to intervene could "make trial management impossible."). Unlike *Berger*, this case shows concrete prejudice. Discovery ballooned to thirty-one depositions and forty-eight subpoenas, the trial lasted four weeks with nineteen witnesses, and Petitioners incurred over $273,000 in added costs. R. at 33. Furthermore, extending *Berger*'s rationale here would encourage unlimited intervention, diversion of scarce judicial resources, and would impair the courts' ability to serve litigants efficiently. This prejudice far exceeds the minor case-management concerns in *Berger* and warrants denial of intervention.

Regarding (3) prejudice to the movant if denied; and (4) unusual circumstances, denial of intervention would not prejudice DOJ. *See infra* pp. 46-47. Finally, no unusual circumstances justify disregarding the delay and prejudice here. The case was under an approved scheduling order before the DOJ sought to reset it. R. at 33.

Limiting the DOJ's continued participation is essential to prevent further prejudice. Rule 24(a)(2) protects against precisely this burden: where an intervenor transforms a limited dispute into sprawling litigation. Without the DOJ, the matter could have concluded in one year. With the DOJ it extended over two years, ballooned in scope, and foreclosed any meaningful prospect of settlement. The prejudice is borne not only by the Petitioners, but also by the Respondents—individuals with serious mental illnesses—who were forced into extended litigation before obtaining relief. This Court should enforce Rule 24(a)(2)'s limits and hold

that the lower courts were clearly erroneous as the DOJ's intervention is functionally late and heavily prejudicial.

B. The DOJ Does Not Have a Legally Protectable Interest, and the DOJ's Regulatory Role Does Not Create a De Facto Right to Intervene Under Rule 24(a)(2).

Rule 24(a)(2) demands a legally protectable interest, not a generalized policy concern. *Donaldson v. United States*, 400 U.S. 517, 531 (1971); *Diamond v. Charles*, 476 U.S. 54, 68-71 (1986). Crucially, it is Congress—*not* the Executive—that determines whether an agency may litigate or enforce statutory rights. *See Republic of Iraq v. Beaty*, 556 U.S. 848, 863-64 (2009) (holding that Congress alone determines whether the United States may enforce statutory rights, and private claims were barred once Congress vested the Executive with authority to suspend causes of action). The DOJ lacks legally protectable interest under Title II for the five following reasons: (1) Congress made a deliberate decision to include explicit enforcement authority for the Attorney General in Titles I and III, but not in Title II, confirming that government enforcement lawsuits were intentionally excluded; (2) Title II does not authorize the DOJ to sue because the Attorney General is not a "person" entitled to the "remedies, procedures, and rights" under 42 U.S.C. § 12133; (3) if enforcement authority were assumed, the DOJ failed to attempt voluntary compliance which is a statutory and regulatory precondition to lawsuit, barring this action under 42 U.S.C. § 2000d-1; (4) allowing the DOJ to bring Title II claims is detrimental to state sovereignty under federalism; and (5) accepting the DOJ's asserted institutional interests would collapse Rule 24(a)(2) into automatic

intervention whenever federal regulations are implicated—contrary to this Court's precedents rejecting agency overreach absent clear statutory authorization. Accordingly, the DOJ's regulatory role under Title II cannot supply the legally protectable interest that Rule 24(a)(2) demands, and intervention as of right should be denied.

1. The construction of Title II in comparison to Titles I and III shows exclusion of the Attorney General was intentional, preventing enforcement action from the DOJ.

Congress's choice of language in Title II in comparison to Titles I and III proves that Congress made a deliberate choice not to authorize the Attorney General to bring enforcement lawsuits. When Congress includes particular language in one section of a statute but omits in another section, courts generally presume that Congress acts intentionally and purposefully. *Russello v. United States*, 464 U.S. 16, 23 (1983).

In evaluation of the ADA, Title I uses similar language to Title II, but additionally gives the "powers, remedies, and procedures ... to the Attorney General." 42 U.S.C. § 12117(a). This is even more explicit in Title III, stating "the Attorney General may commence a civil action in any appropriate United States District Court." 42 U.S.C. § 12188(b)(B). In contrast, the language in Title II reserves the "remedies, procedures, and rights" solely to "persons alleging discrimination." 42 U.S.C. § 12133. If Congress wanted to grant the same powers to the Attorney General under Title II, they could have adopted language parallel to Titles I and III, expressly stating their authority to bring lawsuits. This difference in language between the titles shows that Congress made a deliberate decision not

to include the Attorney General as being entitled to the "remedies, procedures, and rights" under Title II. This indicates congressional intent to avoid setting the federal government and state entities in opposition to each other, preferring private individuals to bring Title II lawsuits.

The Respondents may argue that inclusion of the "Attorney General" in Titles I and III supplements the understanding that they can enforce these actions as "persons" alleging discrimination. *See* 42 U.S.C. §§ 12117(a), 12133, 12188(a)(1) (statutory language in Title I, II and III include language "person"). However, this Court held that without evidence clearly intending surplusage, any interpretation of a statute that would render another portion meaningless should be rejected. *Nat'l Ass'n of Mfrs. v. Dep't of Defense*, 583 U.S. 109, 128 (2018). The Northern District of Illinois recognized this textual difference in the ADA's language by holding that the Attorney General lacks authority to enforce Title II. *Haymarket DuPage, LLC v. Vill. Of Itasca*, 22-CV-160, at *5 (N.D. Ill., 2025). The DOJ was not allowed to bring a Title II claim, as the court saw that the difference in construction in Title II compared to Title I and III indicated a lack of congressional intent. *Id.* at 5. Therefore, these textual differences cannot be overlooked by relying solely on Title II's reference to the 'remedies, procedures, and rights' under the Rehabilitation Act and Civil Rights Act. 42 U.S.C. § 12133.

Congress's choice of omission of 'Attorney General' in Title II statute strongly indicates that it did not reserve the right of enforcement action to the Attorney General. *Id.* Considering the Attorney General as a "person" under Title II of the

ADA would render the language of Titles I and III duplicative and superfluous, which is contrary to the standard of interpretation for statutes in this Court. *Nat'l Ass'n of Mfrs.*, 583 U.S. at 128. Therefore, this Court should follow the Northern District of Illinois' interpretation of Title II of the ADA and exclude the Attorney General from enforcement action.

The Respondents may further argue that the legislative purpose of Congress in establishing the ADA, allowing the federal government to take "a central role in enforcing the standards established … on behalf of individuals with disabilities," implies that the Attorney General can file a lawsuit to enforce Title II of the ADA. 42 U.S.C. § 12101(b)(3); *See United States v. Florida*, 938 F.3d 1221, 1233 (11th Cir. 2019). However, the Attorney General's role in promulgating regulations and establishing clear standards in implementation of Title II sufficiently accomplishes Title II's legislative purpose. 42 U.S.C. § 12134(a). The DOJ's establishment of clear standards for Title II facilitates state entity compliance through lawsuits by individuals. Moreover, the DOJ has the ability to bring enforcement lawsuits under Titles I and III. 42 U.S.C. §§ 12117(a), 12188(b)(B). Therefore, the legislative purpose of the ADA is achieved without authorizing enforcement action for the Attorney General under Title II.

The linguistic differences between Title II in comparison to Titles I and III show that Congress acted intentionally in withholding the Attorney General from bringing enforcement action. Further, the purpose of the ADA is not inhibited from

this withholding, as the DOJ still can have a central role in creating regulations, and bringing enforcement action on Title I and III violations.

2. The DOJ is not a "person" under Title II and therefore lacks the authorization to bring enforcement action under Title II.

Congress did not confer the DOJ with enforcement authority under Title II of the ADA, and therefore the DOJ lacks a legally protectable interest to intervene.

Section 12133 provides remedies only to "any person alleging discrimination." 42 U.S.C. § 12133. This use of "person" refers to qualified individuals with disabilities, not the United States. Because the statute does not expressly authorize DOJ enforcement, the DOJ cannot claim a protectable interest under Title II.

Title II prohibits discrimination by public entities, and incorporates the "remedies, procedures, and rights" of the Rehabilitation Act. 42 U.S.C. §§ 12132, 12133. In turn, the Rehabilitation Act incorporates Title VI of the Civil Rights Act. 29 U.S.C. § 794a(a)(2). Importantly, the language of 42 U.S.C. § 12133 reserves these "remedies, procedures, and rights" to any "person alleging discrimination" under Title II. 42 U.S.C. § 12133. The Attorney General does not fall into this category of "persons alleging discrimination," as they represent a government entity rather than individuals alleging discrimination. Therefore, the DOJ is not entitled to the "remedies, procedures, and rights" under 42 U.S.C. § 12133.

There is a lack of affirmative statutory intent to overcome the presumption against considering the Attorney General to be a "person" under Title II. Under the Dictionary Act, "person" includes corporations, partnerships, societies, and joint stock companies, but not government entities. 1 U.S.C. § 1; *United States v. Mine*

Workers, 330 U.S. 258, 275 (1947). Absent a statutory definition in Title II, there is a "longstanding interpretative presumption that 'person' does not include the sovereign." *Vermont Agency of Natural Resources v. U.S. ex rel. Stevens,* 529 U.S. 765, 780-81 (1999). To overcome this presumption, the DOJ must affirmatively show congressional intent to the contrary. *Id.* at 781.

This Court has consistently applied the presumption that the sovereign is not a "person" absent affirmative statutory intent. *Return Mail, LLC v. USPS*, 587 U.S. 618, 637 (2019). In *Return Mail*, this Court held the United States Postal Service was not a "person" entitled to seek patent review under the America Invents Act ("AIA"). *Id.* The AIA used "person" inconsistently throughout the statute, and the prior inclusion of the government as a "person" involved non-adjudicatory method of proceedings rather than the adversarial proceedings created by the AIA. *Id.* at 632-634.

The reasoning in *Return Mail* applies to this case. The references of the Rehabilitation Act and Title VI of the Civil Rights Act in comparison with Titles I and III create a similar non-consistent usage of "person" and "individual" within the statute. *See infra* pp. 32-34. The use of "person" and "individual" is inconsistent because the Rehabilitation Act and Title VI of the Civil Rights Act have been interpreted to include the government, while Titles I and III clearly do not include the government, as they separately grant enforcement authority to the Attorney General. 42 U.S.C. §§ 12117(a), 12188(a)(1), 2000d-1; 29 U.S.C. § 794. The expansion of scope to all state and local governments under Title II provides

reasoning for Congress to withhold the ability to bring federal enforcement action from the DOJ. *See* 42 U.S.C. § 12132; 29 U.S.C. § 794. Therefore, this Court should follow the logic of *Return Mail* and find that the DOJ is not a "person" under Title II.

The lack of statutory intent and legislative history confirms that Congress intended to limit enforcement to private parties, not the DOJ. Early drafts of the ADA included provisions authorizing the DOJ to bring enforcement action under Title II. H.R. Rep. No. 101-485 II, at 98 (1990), *as reprinted in* 1990 U.S.C.C.A.N. 303, 381. However, in the final bill, the House Judiciary Committee stated that this enforcement scheme is limited to the remedies of the Rehabilitation Act, only stating that this provides a private right of action and remedies, without a mention of DOJ enforcement. H.R. Rep. No. 101-485 III, at 52, *reprinted in* 1990 U.S.C.C.A.N. 445, 475. By authoritatively stating these remedies, Congress made a deliberate choice to omit DOJ enforcement, contrary to previous drafts of the bill.

To distinguish from *Return Mail* and overcome this presumption, the Respondents may argue that Title II is "complex" and therefore allows for the DOJ to be included as a "person alleging discrimination." *See United States v. Sec'y Fla. Agency for Health Care Admin.*, 21 F.4th 730, 738 (11th Cir. 2021) (distinguishing *Return Mail* from Title II of the ADA because the AIA is not "complex" like Title II). This complexity focuses on specific references to the Rehabilitation Act and the Civil Rights Act within the enforcement statute, which are interpreted as allowing the DOJ to bring enforcement lawsuits. *Florida*, 938 F.3d at 1233. However, this is an

arbitrary distinction. Both the AIA and the ADA are complex statutes that cross-reference other statutes. Complexity alone cannot erase the express statutory text limiting enforcement to "persons alleging discrimination." 42 U.S.C. § 12133. As this Court has made clear, "when the statute's language is plain, the function of the courts … is to enforce it according to its terms." *Lamie v. United States Trustee*, 540 U.S. 526, 534 (2004).

Thus, the Respondents fail to prove that there is affirmative statutory intent and cannot rely on mere references to other statutes to meet this threshold. Because the statutory text and legislative history suggests that enforcement authority under Title II belongs solely to private individuals, the DOJ cannot claim the status of a "person alleging discrimination" under section 12133. 42 U.S.C. § 12133.

3. The DOJ cannot bring enforcement action because it has failed to comply with preconditions for lawsuit.

Even if this Court were to hold that the Attorney General is allowed to bring enforcement action on a Title II violation, the DOJ has failed to meet the preconditions for filing lawsuit.

Title II adopts the "remedies, procedures, and rights" of Title VI of the Civil Rights Act. 42 U.S.C. § 12133. Under Title VI, the appropriate person must be made aware of the violation, and it must be determined that the violation cannot be settled through voluntary compliance. 42 U.S.C. § 2000d-1. Failure to comply with Title VI can result in termination of federal financial assistance, or other means that may include bringing federal enforcement action. *Id.* In cases allowing Title II lawsuits to be brought by the Attorney General, attempting to obtain voluntary

compliance is interpreted as a precondition to filing lawsuit. *See Florida*, 938 F.3d at 1236; *see also United States v. City and Cnty. Of Denver*, 927 F.Supp. 1396, 1400 (D. Colo., 1996). Further, this requirement is not waived when the Attorney General intervenes on behalf of another party. *Smith v. City of Philadelphia*, 345 F.Supp.2d 482, 490 (E.D. Penn., 2004).

In this matter, the record is silent on attempts by the DOJ to secure Franklin's compliance under Title II. Instead, the DOJ filed a motion to intervene shortly after completion of the investigation. R. at 2. This suggests that Franklin was deprived of the opportunity to negotiate and voluntarily comply with Title II. Therefore, the Attorney General has not complied with preconditions to sue under 42 U.S.C. § 2000d-1 and cannot file a lawsuit under Title II.

Furthermore, the Attorney General deliberately disregarded DOJ guidelines by filing lawsuit without attempts to resolve Title II violations. DOJ guidelines provide that there must be effort to persuade noncompliant recipients of federal funding to voluntarily comply. 28 C.F.R. § 50.3(C) (1966). Additionally, these efforts must be continuous throughout the course of the enforcement action. *Id.* These regulations are applicable to the Attorney General, not just agencies referring matters to the DOJ for enforcement. *See United States v. Arkansas*, No. 4:10CV00327, 2011 WL 251107, at *4-6 (E.D. Ark. Jan. 24, 2011) (holding that failure to provide detailed written findings and failure to identify measures necessary for Title II compliance prevented the Attorney General from bringing enforcement action). Here, the record is devoid of any efforts to inform Franklin of

minimum measures or any attempt to secure compliance. By failing to make the necessary efforts, the DOJ did not meet the preconditions to bring a lawsuit under Title II of the ADA and therefore cannot intervene.

The Respondents may argue that the DOJ sufficiently informed Franklin through conclusion of the investigation and determined that voluntary compliance would not be forthcoming. However, this would be narrowly relying on an interpretation of 42 U.S.C. § 2000d-1 that describes the precondition as "determining that voluntary compliance is not forthcoming." *City and Cnty. Of Denver*, 927 F. Supp. at 1400. This wording understates the preconditions for the DOJ to file a lawsuit, as even in *City and Cnty. Of Denver*, the court held that an attempt at voluntary compliance was required to satisfy this precondition for lawsuit. *Id.* at 1400*;* 42 U.S.C. § 2000d-1. Any opportunity for negotiation has been bypassed through the failure to obtain voluntary compliance. The potential for alternative agreements is unfairly eliminated by the immediate determination that Franklin is unable to voluntarily comply. Taxpayer money for both federal and state government could have been saved through negotiation is now directed towards litigation. Therefore, the failure to attempt to obtain voluntary compliance is inconsistent with DOJ regulations and is detrimental to allowing third-party resolution.

4. Allowing the DOJ to bring Title II claims is detrimental to the balance of powers between the federal government and state agencies.

The construction of Title II suggests that Congress made a choice to prevent federal encroachment on state entities' local operations. The Constitution creates a

system of dual sovereignty between federal and state government. *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991). Dual sovereignty is a structural protection of liberty for states from the federal government. *Printz v. United States*, 521 U.S. 898, 921 (1997). When the federal government seeks to alter the balance of dual sovereignty in regulation of local matters, Congress must make their intention "unmistakably clear" in the statute. *Gregory*, 501 U.S. at 460.

Title II's focus on discrimination in "activities of a public entity" regards local matters undertaken by state and local government. 42 U.S.C. § 12132. It is apparent that the enforcement section does not make it "unmistakably clear" that the Attorney General can enforce a Title II claim. 42 U.S.C. § 12133. Additionally, there is nothing in the legislative history that the Respondents can point to suggesting that Congress made it "unmistakably clear" that the Attorney General can bring enforcement action under this statute. *See Florida*, 938 F.3d at 1245. Considering both the enforcement statute's text and its legislative history, Congress did not make the Attorney General's authority to sue unmistakably clear.

The ramifications of allowing the Attorney General to bring lawsuits under Title II would be detrimental, creating severe ramifications on the balance of powers under federalism. Federalism is "[t]he legal relationship and distribution of power between the national and federal governments ... whereby both the federal government and the state government share in responsibilities of governing." *Federalism,* Black's Law Dictionary (12th ed. 2024). Title II regulates every service, program, and activity administered by every state in the country. *Sec'y Fla. Agency*

for Health Care Admin, 21 F.4th at 751 (Newsom, CJ, dissenting). Even individual enforcement of Title II encroaches on state sovereignty by subjecting the actions of state administration to federal court review. *See Olmstead*, 527 U.S. at 610 (Kennedy, J., concurring) (there are "federalism costs inherent in referring state decisions regarding the administration of treatment programs and the allocation of resources to the reviewing authority of the federal courts").

This concern of preserving state sovereignty is increased when the Attorney General is allowed to bring enforcement actions under Title II. This would further tilt the federal balance, allowing the federal government to have direct control over the daily and local decisions of state agencies. *Sec'y Fla. Agency for Health Care Admin*, 21 F.4th at 758 (Newsom, CJ, dissenting). Allowing the Attorney General to bring enforcement action under Title II destabilizes the balance of powers between state and federal government. State agencies' autonomy would diminish at the behest of the federal government in a way that reduces local control in traditionally reserved areas of state power. These federalism concerns underscore why Congress declined to expressly authorize the Attorney General to enforce Title II. Congress's decision to preserve this authority from the Attorney General reflects an intent to preserve the constitutional balance between federal and state sovereignty.

5. The DOJ's regulatory authority under section 12134 and its broad policy interests do not create a protectable interest under Rule 24(a)(2).

Neither the DOJ's limited regulatory authority under Title II nor its asserted broad policy interests supply the "significantly protectable interest" required for intervention. *Donaldson*, 400 U.S. at 531; *Diamond*, 476 U.S. at 68-71. Congress

has deliberately withheld enforcement power from the DOJ under Title II, and this Court has consistently rejected attempts to convert either regulatory duties or general policy concerns into litigation authority.

Congress authorized the DOJ to promulgate regulations implementing Title II of the ADA. *See* 42 U.S.C. § 12134 (directing the Attorney General to issue rules consistent with Title II and coordination regulations under section 504 of the Rehabilitation Act). But regulatory responsibility is not litigation authority. *See Alexander v. Sandoval*, 532 U.S. 275, 286-89 (2001) (holding that agency regulations do not create privately enforceable rights absent congressional authorization). Agencies may not infer the right to enforce statutes absent express congressional authorization. *Id.*

In *FDA v. Brown & Williamson Tobacco Corp.*, this Court confirmed that regulatory responsibility does not create privately enforceable rights. 529 U.S. 120, 161 (2000). There, the Food and Drug Administration invoked its broad regulatory responsibility over drugs to assert jurisdiction over tobacco products. *Id.* at 126-29. However, this Court held that Congress had "clearly precluded" such jurisdiction, explaining that "[r]egardless of how serious the problem an administrative agency seeks to address, … it may not exercise its authority in a manner that is inconsistent with the administrative structure that Congress enacted into law." *Id.* at 125 (quoting *ETSI Pipeline Project v. Missouri*, 484 U.S. 495, 517 (1988)). This meant that the FDA's general charge to protect public health did not supply it with enforcement powers Congress had withheld. Similarly, in this matter, DOJ's duties

to implement Title II regulations do not create an implied right to litigate under Title II. *See City & County of San Francisco v. Sessions*, 349 F. Supp. 3d 924, 945–54 (N.D. Cal. 2018) (rejecting DOJ's reliance on its regulatory role to impose grant conditions, holding that only Congress may authorize such requirements). The DOJ's regulatory duties under section 12134, while concrete, are limited. They do not constitute a legally protectable interest under Rule 24(a)(2).

The same principle applies to the DOJ's appeal to broad policy interests. In *Brown & Williamson*, the FDA sought to justify unprecedented regulation of tobacco by citing urgent public health concerns—that tobacco was "the single leading cause of preventable death in the United States" and that youth access must be restricted to reduce long-term mortality. 529 U.S. at 127-28. Yet this Court rejected those claims, holding that sweeping policy arguments cannot substitute for statutory authority. *Id.* at 133-44; *see also City & Cnty. of San Francisco*, 349 F. Supp. 3d at 945–54 (rejecting the DOJ's claim that their regulatory role justified imposing immigration grant conditions, because only Congress may authorize such requirements). Similarly, the DOJ's generalized interests in broad ADA enforcement cannot manufacture a protectable interest under Rule 24(a)(2). Only Congress can authorize such enforcement, and absent that grant, intervention is foreclosed.

Recognizing the DOJ's institutional interests as sufficient would also risk constitutional overreach that this Court repeatedly avoided. This Court has repeatedly cautioned that the Executive may not expand its own power where

Congress has chosen not to act. *Youngstown Sheet & Tube Co. v. Sawyer,* 343 U.S. 579, 587-88 (1952). Allowing the DOJ to intervene in this matter would replicate those constitutional errors. In *Youngstown,* the Court rejected President Truman's attempt to seize the steel mills, holding that "all legislative Powers" rest with Congress, and the President may only execute the laws. 343 U.S. at 587-88. Similarly, in *Utility Air Regulatory Group v. EPA*, the Court struck down the EPA's attempt to "tailor" statutory thresholds in the Clean Air Act, warning that agencies cannot assume "unheralded power" without clear congressional authorization. 573 U.S. 302, 324-29 (2014). Congress deliberately omitted a cause of action for the Attorney General under Title II, reserving remedies to "persons." 42 U.S.C. § 12133. If the DOJ may nonetheless "tailor" Rule 24(a)(2) to create an enforcement role, it will effectively legislate new powers through the courts. *Utility Air*, 573 U.S. at 324-29.

Because Title II expressly limits remedies to private persons and precedent bars inferring agency enforcement where Congress has withheld it, the DOJ's regulatory role or broad policy interest cannot satisfy Rule 24(a)(2). This Court should reject the DOJ's institutional-interest theory and hold that intervention is improper.

C. Because the DOJ Has No Cognizable Interest, There Is No Risk of Impairment Under Rule 24(a)(2).

Rule 24(a)(2) requires that a proposed intervenor establish a legally protectable interest, and inquires whether a proposed intervenor's rights would be impaired if the court resolves the case without them. *Wal-Mart Stores, Inc.*, 834

F.3d at 565; *Illinois*, 912 F.3d at 984. Where no cognizable interest exists, the impairment inquiry ends. *Donaldson*, 400 U.S. at 530-531.

Without a cognizable interest, impairment is impossible. The purpose of the impairment prong is to safeguard a party's rights from being practically foreclosed in its absence. *Wolfsen*, 695 F.3d at 1315. However, Title II of the ADA authorizes relief solely for "any person alleging discrimination on the basis of disability." 42 U.S.C. § 12133. As illustrated above, this Court has consistently construed "person" to exclude the federal government. *Return Mail, LLC*, 587 U.S. at 637; *Haymarket DuPage, LLC*, No. 22-cv-160, at 5.

In this matter, because the DOJ is not a statutory "person," it has no cause of action under Title II and therefore no legally protectable interest would be impaired in this case. The DOJ's regulatory authority under 42 U.S.C. § 12134 or a general policy preference for ADA compliance cannot substitute for the "significantly protectable interest" Rule 24(a)(2) demands. *See Brown & Williamson Tobacco Corp.*, 529 U.S. at 127-28 (rejecting agency's attempt to expand enforcement power based on broad regulatory purposes).

Even if the DOJ had some legitimate interest, exclusion from this private action does not "as a practical matter impair or impede" its ability to pursue that interest because the DOJ can file a separate lawsuit. *Wolfsen*, 695 F.3d at 1315. As the Court of Federal Claims explained, denial of intervention does not impair a proposed intervenor's rights where "other means" exist to vindicate them. *Id.* Here, the DOJ could have initiated its own Title II lawsuit rather than expanding this

private action into a systemic enforcement proceeding. Its participation instead multiplied discovery, prolonged summary judgment by four months, and extended trial to four weeks with nineteen witnesses, imposing more than $273,000 in additional attorneys' fees and costs on Defendants. R. at 33.

Therefore, because the DOJ is not a statutory "person" entitled to remedies under Title II, it lacks a cognizable interest in this litigation. *Return Mail, LLC*, 587 U.S. at 637; *Haymarket DuPage, LLC*, No. 22-cv-160, at 5. Without such an interest, the impairment prong fails as a matter of law. Allowing intervention here would improperly convert a private lawsuit into a broad federal enforcement action absent congressional authorization.

D. Because the DOJ's Interests Are Fully Aligned With Those of the Private Plaintiffs, Its Intervention Is Unnecessary.

Even if the DOJ has a legally sufficient interest, intervention should be denied because the DOJ's asserted interests are already adequately represented by the existing plaintiffs. When existing parties are pressing the very claims the intervening party seeks to advance, Rule 24(a)(2) bars intervention as unnecessary. *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 537 (1972); *Arakaki*, 324 F.3d at 1086–87; *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997).

This Court has held that intervention of right requires (1) sufficient interest in the proceedings, and (2) a showing that such interest is not adequately represented by existing parties. *Trbovich*, 404 U.S. at 538 n.10. Where the proposed intervenor and existing parties share the same "ultimate objective," courts presume

adequacy of representation, and the burden falls on the intervenor to overcome that presumption. *Trbovich*, 404 U.S. at 537; *Arakaki*, 324 F.3d at 1086–87; *League of United Latin Am. Citizens*, 131 F.3d at 1302.

In *Trbovich*, individual union members sought to intervene in litigation already brought by the Secretary of Labor challenging union elections. 404 U.S. at 529-30. The Court emphasized that because the Secretary was litigating the very same claim, the burden was on the union members to demonstrate that the Secretary's representation of his interests "may be" inadequate. *Id.* at 537–39. Similarly, in *Arakaki*, the Ninth Circuit denied intervention where the State of Hawaii's defense already encompassed the intervenors' "ultimate objective." 324 F.3d at 10860-87. The same reasoning applies here. The Respondents already asserted Title II claims alleging unnecessary institutionalization and seek injunctive relief against Franklin. R. at 11, 24. The DOJ seeks identical legal determination and substantially overlapping relief. R. at 24. Under *Trbovich* and *Arakaki*, the presumption of adequate representation applies. 404 U.S. at 537; 24 F.3d at 1086-87. Because plaintiffs' participation is sufficient to protect the asserted interests, the DOJ's intervention should be denied. 404 U.S. at 529-30; 324 F.3d at 1086-88.

The DOJ contends its presence is necessary to obtain broader, systemic relief for all Franklin residents—relief beyond what three private plaintiffs could secure. *See Arakaki*, 324 F.3d at 1086-87 (considering whether existing parties are capable of making all necessary arguments). However, allowing intervention on this ground

would create a precedent whereby the government could insert itself into any private action simply by invoking "broad relief" as justification, even where its objectives are indistinguishable from the existing parties. Many circuits have rejected such attempts to ground intervention on generalized public interests. In *New Orleans Pub. Serv., Inc. v. United Gas Pipe Line Co.*, the Fifth Circuit denied intervention where the City asserted only a generalized economic interest in avoiding higher rates, finding the interest too broad to support Rule 24(a)(2) intervention. 732 F.2d 452, 465-66, 470 (5th Cir. 1984) (en banc). Similarly, in *Blake v. Pallan*, the Ninth Circuit rejected intervention by the California Commissioner of Corporations, reasoning that it would be "impractical" to base intervention solely on generalized public interest grounds. 554 F.2d 947, 953 (9th Cir. 1977). Moreover, the Seventh Circuit refused to allow intervention in *Commonwealth Edison Co. v. Allis-Chalmers Mfg. Co.,* where Illinois claimed a consumer-protection interest in a private antitrust lawsuit, finding this interest too indirect. 315 F.2d 564, 566-67 (7th Cir. 1963).

The DOJ's asserted need for "systemic relief" mirrors the rejected rationales in *New Orleans*, *Blake*, and *Commonwealth Edison*. 732 F.2d at 465-66, 470; 554 F.2d at 953; 315 F.2d at 566–67. If accepted, such reasoning would effectively grant the Attorney General a de facto right to intervene in any ADA lawsuit, undermining Rule 24(a)(2)'s carefully limited scope.

Accordingly, the DOJ's desire to obtain sweeping injunctive relief across Franklin is not a distinct, protectable interest under Rule 24(a)(2). The

Respondent's case already addresses the alleged discriminatory practices and seeks injunctive relief. The DOJ's systemic concerns do not override the presumption of adequate representation, and intervention should therefore be denied.

CONCLUSION

The individuals merely at risk of institutionalization cannot maintain a Title II claim under the ADA. The plain language in Title II and the integration mandate does not suggest such an extension. The DOJ's guidance document which extends the integration mandate to those at risk of institutionalization cannot be given deference. Extending the ADA to individuals with legally unripe claims undermines its core purpose of protecting qualified individuals with disabilities. In addition, granting the Respondent's requested relief would fundamentally alter Franklin's mental health services.

Furthermore, this Court should deny the DOJ's motion to intervene. The DOJ's intervention was untimely and prejudicial. The DOJ lacks any legally protectable interest under Rule 24(a)(2), therefore, there is no risk of impairment; and the private plaintiffs already adequately represent the asserted interests by the DOJ. For the following reasons, the Petitioners respectfully requests that this Court REVERSE the ruling of the Twelfth Circuit Court of Appeals.

Respectfully submitted,

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Attorneys for Petitioners