No. 24-892

In the Supreme Court of the United States

THE STATE OF FRANKLIN DEPARTMENT OF SOCIAL AND HEALTH SERVICES ET AL., PETITIONER

V.

SARAH KILBORN, ET AL. AND THE UNITED STATES OF AMERICA, RESPONDENT

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TWELFTH CIRCUIT

BRIEF FOR THE RESPONDENT

Oral Argument
Date:
Round:

[OMITTED]
Attorneys for Respondent

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QUESTIONS PRESENTED

1. Can a person at risk of institutionalization and segregation in a hospital in the future, but who is not currently institutionalized or segregated, maintain a claim for discrimination under Title II of the Americans with Disabilities Act?
2. Can the United States file a lawsuit to enforce Title II of the Americans with Disabilities Act and thus have an interest relating to the subject matter of a private Americans with Disabilities Act action under Federal Rule of Civil Procedure 24(a)(2)?

STANDARD OF REVIEW

This Court is reviewing the Twelfth Circuit's affirmation of the Respondent's motion for summary judgment on the discrimination claim, as well as the United States' motion to intervene. This Court has yet to determine the appropriate standard of review applicable to a grant of a motion to intervene under FRCP 24(a)(2), or a denial based on reasons apart from timeliness. R. at 25. Guided by the First, Second, Third, and Fourth Circuit Court of Appeals, this Court should review a court's decision on whether to grant a motion to intervene as of right under FRCP Rule 24(a)(2) for abuse of discretion. *See, e.g., Int'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, 115 (3d Cir. 1992); *In re Sierra Club,* 945 F.2d 776, 779 (4th Cir. 1991).

STATEMENT OF THE CASE

1. Statement of Facts

This case involves the discrimination against three private individuals with mental health disorders. Plaintiffs Sarah Kilborn, Eliza Torrisi, and Malik Williamson allege that the state of Franklin violated Title II of the Americans with Disabilities Act ("ADA") by failing to operate and maintain community mental health facilities within a reasonable distance from their places of residence. 42 U.S.C. § 12132; R. at 15. Plaintiffs, who have previously received inpatient treatment in hospitals, claim that they are at risk of being institutionalized in Franklin hospitals in the future and are susceptible to unnecessary segregation. R. at 11.

In 2011, Franklin had three functional community health facilities but two—the Mercury facility and Bronze facility—were forced to close due to budget cuts. R. at 15. Further, the Platinum Hills inpatient program was eliminated. R. at 16. While Franklin's Department of Health and Social Services Budget was raised by five percent in 2021, no actions have been taken to reopen the Mercury or Bronze community mental health facilities. R. at 15-16. Crucially, community mental health facilities can be beneficial to patients in place of institutionalization because they allow for seamless community integration and emphasize preventative care. *Community Mental Health, APA Dictionary of Psychology*, https://dictionary.apa.org/community-mental-health (last visited Sept. 4, 2025).

Plaintiffs Kilborn, Torrisi, and Williamson have an extensive history of receiving inpatient treatment in Franklin hospitals. R. at 12. Kilborn, diagnosed with bipolar disorder, began her inpatient treatment at Southern Franklin Regional Hospital (a state-operated mental health facility). R. at 12. After two years, she left inpatient treatment after her physician decided she was no longer at risk of harming herself. R. at 13. In 2011, she returned to Southern Franklin Regional Hospital. R. at 13. After another two years, her physician recommended she move to a community mental health facility where she could receive daily treatment instead of inpatient treatment. R. at 13. Unfortunately, Kilborn could not afford the private mental health facility near her home in Silver City, and the nearest state-operated community facility was a three-and-a-half-hour drive. R. at 13. Unable to access a community health facility, Kilborn remained institutionalized for an additional two

years. R. at 13. She confronted the same issue in 2020 after voluntarily admitting herself back to Southern Franklin Regional Hospital in 2018. R. at 13. She was faced again with additional institutionalization rather than experiencing the benefits of a community mental health center. R. at 13. As of now, Kilborn is not currently institutionalized, but fears a future where she faces the same institutional barriers to adequate mental health care. R. at 13.

Similar to Kilborn, Plaintiff Torrisi is also diagnosed with bipolar disorder. R. at 14. Due to the severity of her condition, Torrisi was admitted to Newberry Memorial Hospital (a state-operated facility) in Great Lakes, Franklin. R. at 14. After a year, her physicians suggested she move to inpatient treatment at a community mental health facility where she could experience more opportunities for socialization like longer visiting hours, supervised outings in the community, and increased interaction with other patients. R. at 14. However, there were no state or privately-operated community mental health facilities within four hours of where Torrisi lives. R. at 14. There is still not even a single state-operated community mental health facility within Franklin that offers inpatient treatment. R. at 14. As a result, Torrisi remained at Newberry Memorial Hospital in inpatient care until her condition improved. R. at 14. While currently not institutionalized, Torrisi worries about the next time she is admitted.

The final plaintiff, Williamson, was diagnosed with schizophrenia in 1972 and has endured both inpatient and outpatient care across multiple hospitals in Franklin. R. at 14–15. Williamson was admitted to Franklin State University

Hospital (a state-operated facility) in Platinum Hills in 2017. R. at 15. His physician recommended he be transferred to a community mental health facility for inpatient treatment. R. at 15. Once again, there were no state-operated facilities in Franklin that offered impatient treatment so Williamson had to remain at Franklin State University Hospital. R. at 15. When Williamson's physician recommended he was able to receive outpatient care, he was finally able to leave the hospital setting. R. at 15. Although Williamson is now in outpatient care, he fears the risk of future unnecessary institutionalization. R. at 15.

2. Procedural History

In February 2022, Kilborn, Torrisi, and Williamson filed suit in United States District Court against the State of Franklin Department of Social and Health Services and Mackenzie Ortiz, in her official capacity as Secretary of said agency. R. at 2. They alleged discrimination in violation of Title II of the ADA. 42 U.S.C. § 12132. R. at 2. Following the complaint, the United States ("U.S.") announced an investigation into Franklin's compliance with Title II and determined it was in violation. R. at 2. On May 27, 2022, the U.S., through the Attorney General, filed a motion to intervene on Respondents' behalf stating that it had found the claim of Title II violation to be sustained. R. at 2. The U.S. then alleged that Petitioners violated Title II of the ADA by failing to provide adequate community mental health facilities for all those who are at risk of being unnecessarily institutionalized and segregated at a Franklin hospital in the future. R. at 2. Petitioners filed an opposition to the motion, arguing in part that the U.S. cannot maintain a cause of

action under Title II and thus has no interest in this litigation that warrants intervention. R. at 2.

The district court granted the United States' motion to intervene. R. at 9. The parties then filed cross-motions for summary judgment on the issue of whether a person at risk of institutionalization and segregation in a Franklin hospital in the future, but who is not currently institutionalized or segregated, can maintain a claim for discrimination under Title II of the ADA. R. at 12. After considering the parties' summary judgment briefs and oral argument, the district court granted Respondents' and the U.S.'s motion for summary judgment. R. at 12. Petitioners appealed contesting (1) whether a person at risk of institutionalization can maintain a Title II claim and (2) whether the U.S. can intervene in the civil action. R. At 25.

The Twelfth Circuit Court of Appeals found that the district court's holding on the U.S.'s motion to intervene was not clearly incorrect and thus must be affirmed under the abuse of discretion standard. R. at 28. Additionally, the court of appeals held that the district court was correct in joining the Second, Fourth, Sixth, Seventh, Ninth, and Tenth Circuits in concluding that a cause of action may be brought under Title II of the ADA for those who may be at risk of segregation. R. at 29. This Court granted cert limited to the questions presented. R. at 40.

SUMMARY OF ARGUMENT

This Court should affirm the decision of the Twelfth Circuit Court of Appeals and hold that an individual at risk of institutionalization and segregation in a

hospital in the future, but not currently institutionalized or segregated, can maintain a claim of discrimination under Title II of the ADA.

First, the Department of Justice's ("DOJ") guidance document specifically articulates that individuals at risk of institutionalization are entitled to Title II protection. Nothing in *Olmstead* or the language of the integration mandate suggests that actual institutionalization is a prerequisite for a Title II discrimination claim. Such integration protections would be futile if people were forced to subject themselves to psychiatric segregation before challenging a discriminatory policy or law. Further, across the circuits, federal courts of appeals are united in holding that individuals need not be institutionalized or segregated before bringing a Title II discrimination claim.

Next, the DOJ's guidance document warrants deference. The document is entitled to *Auer* deference because the ADA's integration mandate is genuinely ambiguous considering its text, structure, history, and purpose. Additionally, the DOJ's interpretations fall within a reasonable sphere of interpretation. The guidance document further warrants deference because the DOJ actually produced the interpretation, the DOJ's interpretation implicates its substantive expertise, and the DOJ's reading reflects fair and considered judgment. The guidance document is also entitled deference under *Skidmore* because it constitutes a body of experience and informed judgment to which courts may resort for guidance. Additionally, the document has the power to persuade courts because it is sufficiently thorough and consistent with earlier pronouncements.

Denying risk-based claims would gut the purpose of the ADA. The ADA was enacted to provide clear, consistent, and enforceable standards addressing discrimination against individuals with disabilities, thus guaranteeing their civil rights. It would be tragic if the integration mandate were to be interpreted to force people to subject themselves to institutionalized care before challenging their mistreatment. Discrimination must be combatted before it happens. This Court should therefore affirm the opinion below and hold that individuals at risk of institutionalization and segregation can sustain a Title II discrimination claim.

Additionally, this Court should affirm the Twelfth Circuit's grant of the U.S.'s Motion to Intervene because a court must permit a party to intervene in a civil action if the proposed intervenor satisfies the requirements of FRCP 24(a)(2). Under an abuse of discretion standard of review, the decision of the district court can only be overturned if an improper legal standard was used or the decision of the trial court was clearly erroneous. This Court must award deference to the district court as it applied the proper legal standard.

First, the motion to intervene was timely as no undue delay occurred that would have caused prejudice to Petitioner. The U.S. moved to intervene immediately after it became known that a decision in this case would undermine its responsibility to enforce the ADA on behalf of individuals with disabilities. As a matter of judicial economy, it is more appropriate for the U.S. to intervene in this lawsuit instead of filing a separate suit on its own.

Second, the U.S. has an institutional interest in effecting compliance with the federal legislation of the ADA. Through statutory cross-references in Title II of the ADA, the same "remedies, procedures, and rights" available under the Rehabilitation Act, derived from Title VI of the Civil Rights Act, are afforded to persons alleging discrimination. Thus, the enforcement scheme utilized in the incorporated legislation are adopted for claims under Title II of the ADA. Prominent among them is civil action by the U.S. on behalf of discriminated individuals. Ultimately, a failure to litigate this instance of discrimination would impair the U.S.'s interests to enforce the ADA.

Finally, the U.S. must intervene because the three private plaintiffs in this action do not adequately represent the interests of the U.S. as a whole. Since the U.S. seeks relief on behalf of all persons in the country who are at risk of being unnecessarily institutionalized and segregated at Franklin Hospitals, a result for the private plaintiffs does not respond to the U.S.'s interests.

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY HELD THAT THOSE AT RISK OF FUTURE INSTITUTIONALIZATION AND SEGREGATION MAY SUSTAIN A CAUSE OF ACTION UNDER TITLE II OF THE ADA.

A person at risk of institutionalization and segregation in a hospital in the future, but who is not currently institutionalized or segregated, can maintain a claim for discrimination under Title II of the ADA. Title II provides that "no qualified individuals 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. A qualified individual refers to someone with a disability who "meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." *Id.* at § 12131. Public entity refers to "any State or local government" and "any department, agency, special purpose district, or other instrumentality of a State or States or local government." *Id.*

Pursuant to congressional authority, the Attorney General of the U.S. promulgated regulations to implement the provisions in Title II ("implementation provisions"). *Id.* at § 12134(a). Salient to this case is the "integration mandate." Under the integration mandate, a "public entity shall administer services, programs, and activities in the most integrated settings appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130.

In *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 597 (1999), this Court fine-tuned the integration mandate, holding that Title II discrimination includes "unjustified isolation based on disability." After *Olmstead*, the DOJ issued a guidance document ("guidance document") extending the integration mandate and *Olmstead* "to persons *at serious risk* of institutionalization or segregation." United States Department of Justice, Statement of the Department of Justice on the Integration Mandate of Title II of the ADA and *Olmstead v. L.C.,* https://archive.ada.gov/olmstead/q&a_olmstead.htm (emphasis added).

For decades, courts have construed *Olmstead* to include the DOJ's guidance document and thus extend Title II protection to those at risk of future

institutionalization and segregation. *See Davis v. Shah*, 821 F.3d 231, 263 (2d Cir. 2016). Further, the guidance document warrants deference under both *Auer* and *Skidmore*. *Kisor v. Wilkie*, 588 U.S. 558, 568 (2019); *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). Denying risk-based discrimination claims would gut the purpose of the ADA and unfairly discriminate against people with disabilities. Thus, this Court should hold that a person at risk of institutionalization and segregation need not be currently institutionalized or segregated to sustain a claim of discrimination under Title II of the ADA.

a. This Court Should Extend *Olmstead* to Adopt the DOJ's Title II Guidance Document.

The *Olmstead* decision should be interpreted to include the DOJ's Title II guidance document, which specifically articulates that persons at risk of institutionalization are entitled to integration. *See* United States Department of Justice, Statement of the Department of Justice on the Integration Mandate of Title II of the ADA and *Olmstead v. L.C.,* https://archive.ada.gov/olmstead/q&a_olmstead.htm. Nothing in *Olmstead* or the language of the integration mandate supports the inference that an individual must be currently institutionalized before seeking enforcement under Title II of the ADA. *Fisher v. Oklahoma Health Care Auth.*, 335 F.3d 1175, 1181 (10th Cir. 2003). Further, the circuits are united in concluding that individuals need not be currently institutionalized or segregated to sustain a Title II discrimination claim. This Court should follow.

i. *Institutionalization is not a prerequisite for Title II protection.*

Neither the integration regulation nor the *Olmstead* decision requires individuals to be institutionalized before they seek Title II enforcement. Because of the detrimental effects of unjustified institutionalization, the Attorney General clarified that an integrated setting refers to "a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible." *Olmstead,* 527 U.S. at 592 (citations omitted). There is no language in the integration regulation limiting causes of action to those currently institutionalized.

The *Olmstead* decision instructs states to provide community-based treatment for persons with mental disabilities when (1) "the State's treatment professionals determine that such placement is appropriate," (2) "the affected persons do not oppose such treatment," and (3) "the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities." *Id.* at 607. *Olmstead* does not imply that disabled persons imperiled with segregation "may not bring a challenge to . . . state policy under the ADA's integration regulation without first submitting to institutionalization." *Fisher*, 335 F.3d at 1182.

In *Olmstead*, this Court held that "[u]njustified isolation of people with disabilities is a form of discrimination" under Title II of the ADA. There, two patients with mental disabilities challenged their continued confinement in a segregated psychiatric unit. *Olmstead,* 527 U.S. at 593–94. Drawing on the DOJ's implementation provisions, this Court ultimately concluded that the patients were entitled community-based treatment rather than institutionalization. *Olmstead,*

527 U.S. at 597. In its reasoning, this Court noted that unjustified institutional placement "severely diminishes everyday life activities" and "perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life." *Id.* at 600–01; *see also Fisher*, 335 F.3d at 1181 ("[integration] protections would be meaningless 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"). This Court also specified that nothing its decision, the ADA, or the DOJ's implementation provisions "condones termination of institutional settings for persons unable . . . to benefit from community settings"; rather, it provides that "'qualified individual[s] with a disability' may not 'be subjected to discrimination.'" *Olmstead,* 527 U.S. at 601-02 (quoting 42 U.S.C. § 12132).

The integration regulation requires Petitioner to provide adequate state-operated community health facilities to those at risk of institutionalization. Although the patients in *Olmstead* were confined in a segregated unit at the time they brought their claim, the *Olmstead* decision does not hinge on the status of their disintegration; instead, this Court focused on the egregious repercussions of unjustified institutionalization. *Olmstead,* 527 U.S. at 601–02. Here, Respondents are faced with the same "unwarranted assumptions" that they are "unworthy of participating in community life." *Id*. And even worse, they are threatened with the risk of losing access to family, friends, work, education, culture, and overall independence. *Olmstead,* 527 U.S. at 601. The DOJ promulgated the integration

regulation to avoid exactly that. Administering "services, programs, and activities in the most integrated setting appropriate" does not involve imperiling patients to unwarranted psychiatric segregation before they are permitted to seek protection under Title II. 28 C.F.R. § 35.130.

Petitioner conjures restrictions out of thin air that *Olmstead* did not recognize. This Court specifically clarified that its decision should not be interpreted to imply things that it did not discuss. *See Olmstead,* 527 U.S. at 601 (specifying that *Olmstead* does not suggest the termination of justified psychiatric segregation). By arguing that patients must be institutionalized before bringing a Title II discrimination claim, Petitioner does exactly what this Court cautioned against. The spirit of the *Olmstead* decision is to prevent discrimination against people with disabilities and promote their right to be integrated into community settings. Understanding *Olmstead* to apply to at-risk individuals is consistent—if not inherent—with that spirit. It makes no sense to require people to subject themselves to institutional care before affording them the right to challenge their discrimination. *Fisher*, 335 F.3d at 1181. Segregation must be prevented before it occurs.

ii. *Federal circuit courts routinely hold that Title II protection extends to those at risk of institutionalization and segregation.*

Time and time again, federal courts of appeals have held that individuals at risk of institutionalization and segregation can maintain a Title II cause of action. After the *Olmstead* decision concretely established that unjustified isolation constitutes disability-based discrimination, *Olmstead* 527 U.S. at 597, lower courts

have repeatedly interpreted *Olmstead* to include the DOJ's subsequent guidance document and thus have held that Title II protects individuals at risk of institutionalization, *see, e.g. Fisher*, 335 F.3d 1175; *Pashby v. Delia*, 709 F.3d 307 (4th Cir. 2013); *M.R. v. Dreyfus*, 697 F.3d 706 (9th Cir. 2012); *Davis v. Shah*, 821 F.3d 231 (2d Cir. 2016); *Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 979 F.3d 426 (6th Cir. 2020); *Radaszewski ex rel. Radaszewski v. Maram*, 383 F.3d 599 (7th Cir. 2004); *Steimel v. Wernert*, 823 F.3d 902 (7th Cir. 2016). Uniformity across the circuits consistently shows that Title II enforcement does not require actual institutionalization.

The large majority of circuit court cases extend *Olmstead* to include the DOJ's guidance document. *Davis*, 821 F.3d at 263. For example, in *Davis v. Shah*, the Second Circuit recognized a Title II violation where plaintiffs established that restrictions to New York's Medicaid coverage would subject them to an increased risk of institutionalization. *Id.* at 261. The court of appeals held that "[b]ecause the integration mandate 'is a creature of the [DOJ's] own regulations,' DOJ's interpretation of that provision is 'controlling unless plainly erroneous or inconsistent with the regulation.'" 821 F.3d at 263 (quoting *Kisor* 588 U.S. at 565); *see also Pashby*, 709 F.3d at 332 (citations omitted) ("Because Congress instructed the DOJ to issue regulations regarding Title II, we are especially swayed by the DOJ's determination that 'the ADA and the *Olmstead* decision extend to persons at serious risk of institutionalization or segregation.'"). Similarly, in *Steimel v. Wernert*, the Seventh Circuit held that at-risk status suffices to recognize a

violation, observing that "there is no reason to think that the [integration] mandate presents such a crabbed binary" between actual institutionalization and the risk of such isolation. 823 F.3d at 912-13; *see also Dreyfus*, 697 F.3d at 735 (holding that the DOJ's interpretation is reasonable and avoids the unnecessary clinical risk of psychiatric segregation).

Contrarily, in *United States v. Mississippi*, 82 F.4th 387, 389 (5th Cir. 2023), the Fifth Circuit held that Mississippi did not violate Title II's integration mandate. There, the U.S. filed suit against Mississippi for alleged unnecessary institutionalization—rather than community-based services—for adults with mental health issues. *Id.* The court of appeals ultimately found no Title II violation because the U.S.'s suit was based on the Mississippi's alleged scheme of "systemic deficiencies" rather than "individual instances of discrimination." *Id.*

The great weight of precedent forged by the circuits exemplifies that "at risk" status does not preclude an individual from sustaining a Title II claim. Even though none of the plaintiffs in the above cases were actually institutionalized at the time of their claim, the courts of appeals nevertheless recognized their right to integration. *See Davis*, 821 F.3d at 263. Nearly every case recognized that the DOJ's guidance document is inherent both in the integration mandate as well as the *Olmstead* decision. *See Pashby*, 709 F.3d at 332. This allows courts to prevent risk before it happens rather than hyper-focusing on the status of plaintiffs' suffering. The case law overwhelmingly affirms that the risk of institutionalization

constitutes a sufficiently exigent harm to support a claim of discrimination under Title II of the ADA. So too here.

Petitioner distorts the law by relying on *Mississippi* and contending that Respondents' risk of segregation is hypothetical. It is not. Respondents offer three individual stories of their personal sufferings in isolation that give rise to their fear of future institutionalization. Sarah Kilborn, Eliza Torrisi, and Malik Williamson have all have been institutionalized at least once, if not more. R. at 12–14. Unlike *Mississippi* where the DOJ's investigation was not prompted by any individual instance of discrimination, here the DOJ only became involved *after* Respondents came forward with their respective claims. R. at 16. Thus, analogizing to *Mississippi* would not only be factually incongruous, but also blatantly disrespectful to the experiences of Kilborn, Torrisi, and Williamson. The evolution of law is clearly reflected by the permeating trend across the circuits. This Court should follow suit and hold that individuals at risk of institutionalization can maintain a discrimination claim under Title II.

b. The DOJ's Guidance Document Is Entitled to Deference.

DOJ's guidance document warrants deference under *Auer* and *Skidmore*. *Auer v. Robbins*, 519 U.S. 452, 463 (1997) requires courts to assess whether a regulation is ambiguous—and if so, presume that "the power authoritatively to interpret its own regulations is a component of the agency's delegated lawmaking powers." *Kisor*, 588 U.S. at 574, 569-70 (quoting *Martin v. Occupational Safety & Health Rev. Comm'n*, 499 U.S. 144, 151 (1991)). Even if *Auer* deference cannot be established, an agency's interpretation of a regulation or statute may still inform a

court's judgment or guide a court a certain direction. *Skidmore v. Swift & Co.*, 323 U.S. 140, (1944).

i. *Auer deference applies.*

Auer instructs this Court to yield to the DOJ's interpretations of the integration mandate and the *Olmstead* decision set forth in its guidance document. *Auer* deference refers to the presumption that "Congress intended for courts to defer to agencies when they interpret their own ambiguous rules." *Kisor*, 588 U.S. at 573. The reasoning underlying this doctrine is that unlike courts, agencies have particularized expertise relevant to understanding complex regulations. *Id.* at 571. Further, Congress frequently prefers "resolving interpretive issues by uniform administrative decision, rather than piecemeal by litigation." *Id.* at 571 (quoting *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 568 (1980)).

A court should only afford *Auer* deference if the regulation is "genuinely ambiguous. *Id.* at 574. But "a court cannot wave the ambiguity flag just because it found the regulation impenetrable on the first read": it must first consider the text, structure, history, and purpose of the regulation "in all the ways it would if it had no agency to fall back on." *Id.* at 575. If a genuine ambiguity persists, the agency's reading must still fall within a reasonable sphere of interpretation. *Id.* at 576. Even then, a court must independently decide whether the "context of the agency interpretation entitles it to controlling weight." *Id.* Thus, *Auer* deference may be appropriate when: (1) "the regulatory interpretation [is] actually made by the agency," (2) "the agency's interpretation…implicate[s] its substantive expertise, and (3) "an agency's reading of a rule…reflect[s] 'fair and considered judgment.'" *Kisor*,

588 U.S. at 577–79 (quoting *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142 (2012)).

Because the integration mandate was promulgated by the DOJ, its interpretation of that regulation in the guidance document prevails. *See Kisor*, 588 U.S. at 565. First, the ADA's integration mandate is genuinely ambiguous. The nebulous text of the regulation is crux of the present case; the language does not clarify whether a public entity's duty to administer integrated services, programs, and activities is dependent upon an individual's' institutionalization status. The structure of the integration mandate furthers its ambiguity as the provision is merely a sentence long with scant detail or specification. The history of the regulation is equally unclear because the seminal case guiding it—*Olmstead*—does not explicitly address whether the integration mandate applies to individuals with at-risk status. The purpose of the integration mandate adds to the complexity even more. Was the mandate promulgated to protect only those individuals who are institutionalized? It does not specify. Thus, the regulation is genuinely ambiguous.

Next, the DOJ's interpretations set forth in the guidance document are reasonable. The DOJ's document does not issue any far-reaching or sweeping interpretations. Instead, the document merely clarifies that the DOJ's very own integration mandate should be understood to apply not only to those currently institutionalized, but also those at risk of institutionalization. The DOJ did not reinvent the wheel; it is simply extended a basic protection to people with

disabilities at risk of institutionalization, and that is certainly within the reasonable sphere of interpretation.

Lastly, the "context of the [DOJ's] interpretation entitles it to controlling weight." *Kisor*, 588 U.S. at 576. The guidance document interpreting the integration mandate was "actually made by the [DOJ]." *Id.* at 577. Further, the "[DOJ's] interpretation…implicate[s] its substantive expertise" because who better to interpret the integration mandate than the agency who promulgated it? *Id.* The DOJ also has the most experience adjudicating ADA enforcement cases, which implicates the agency's expertise even more. And ultimately, the DOJ's "reading of [the integration mandate] …reflect[s] 'fair and considered judgment'" because, as aforementioned, it does not suggest any grandiose or novel interpretation. *Kisor*, 588 U.S. at 579 (quoting *Christopher,* 567 U.S. at 142). All it does is leave the door of *Olmstead* and the integration mandate slightly ajar to allow at-risk individuals to seek Title II protection. *Kisor*, 588 U.S. at 579. Thus, because the integration regulation is genuinely ambiguous, this Court should defer to the DOJ's interpretation in its guidance document.

ii. *Skidmore deference applies.*

Even if *Auer* does not apply, the DOJ's guidance document is still entitled to deference under *Skidmore v. Swift*. Although agency interpretations are not controlling under *Skidmore*, such readings nevertheless "constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). The extent a court will rely on such agency interpretations "depends upon the thoroughness

evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade." *Skidmore,* 323 U.S. at 140.

In *Skidmore*, employees of a packing plant brought an action under the Fair Labor Standards Act (FLSA) to recover compensation. *Id.* at 136. A dispute arose regarding whether "waiting time" could be considered "working time" for which they would be entitled to payment. *Id.* The Court looked to the Office of Administrator, in which Congress endowed the power to inform of conditions subject to FSLA. *Id.* at 138. It ultimately held that even though the Administrator's standards and interpretations are not governing, that "does not mean that they are not entitled to respect." *Id.* at 140. Because the Administrator's policies were made "in pursuance of official duty" and "based upon more specialized experience and broader investigations," they would "determine the policy which will guide applications for enforcement." *Id.*

The DOJ's implementation provisions constitute a "body of experience and informed judgment" that this Court may—and should—defer to. Like the Administrator's policies in *Skidmore*, the DOJ's guidance document warrants respect because it was "made in pursuance of official duty" and "based on specialized experience." 323 U.S. at 140. In creating the document, the DOJ was thorough and specific; not only does the document include an extensive overview of the history of the ADA and *Olmstead*, but it also addresses relevant questions and answers that further refine the integration mandate's enforcement rules. United

States Department of Justice, Statement of the Department of Justice on the Integration Mandate of Title II of the ADA and *Olmstead v. L.C.,* https://archive.ada.gov/olmstead/q&a_olmstead.htm. It even offers an example of an at-risk plaintiff successfully bringing an *Olmstead* violation claim. *Id.* The DOJ's guidance document is valid and consistent with the ADA's purpose to eliminate discrimination against individuals with disabilities because the document carves out protections for those at risk of institutionalization. *Id.* Therefore under *Skidmore*, the DOJ's interpretations of the integration mandate meet the "factors which give it the power to persuade." 323. U.S. at 134.

c. Denying Risk-Based Claims Is Antithetical the Purpose of the ADA.

Rejecting discrimination claims brought by those at risk of institutionalization disembowels the core mission of the ADA. Congress intended for the ADA "to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities." 42 U.S.C. § 12101. The ADA's language, purpose, and history further suggest that the ADA was "primarily meant to guarantee the civil rights of people with disabilities by moving them into the mainstream of American social, political, and economic life and by ending their isolation and segregation." Miranda Oshige Mcgowan, *Reconsidering the Americans with Disabilities Act*, 35 Ga. L. Rev. 27, 40 (2000); *see also* Prianka Nair, *Surveilling Disability, Harming Integration*, 124 Colum. L. Rev. 197 (2024) ("[t]he ADA expresses a clear goal of preventing the unnecessary segregation and isolation of people with disabilities.").

It would be a "psychiatric *Titanic*" if this Court were to deny individuals the ability to protect themselves from segregation before it happens. See *Olmstead*, 527 U.S. at 609 (Kennedy, J., concurring). Doing so does not provide clear, strong, or consistent standards of addressing discrimination. Nor does it promote recovery or integration. Instead, it forces people to subject themselves to isolation if they wish to challenge their mistreatment. That line of thinking is completely backwards. Addressing discrimination should not be retroactive by nature; it should be proactive and consist of combatting wrongs before they cause irreparable harm. Only then does the integration mandate protect the rights of individuals with disabilities and integrate them into "social, political, and economic life." Mcgowan, *supra,* at 40.

The repercussions would be severe if the integration mandate were to be interpreted "to drive those in need of medical care and treatment out of appropriate care and into settings with too little assistance and supervision." See *Olmstead*, 527 U.S. at 610 (Kennedy, J., concurring). It makes no sense for individuals to languish in such settings when treatment with greater freedom and dignity exists. *See id.* Adopting the DOJ's implementation's provisions "is not just good public policy. It is a matter of guaranteeing essential civil rights." Mcgowan, *supra*, at 40.

II. THE CIRCUIT COURT CORRECTLY HELD THAT THE UNITED STATES CAN FILE A LAWSUIT TO ENFORCE TITLE II OF THE ADA VIA INTERVENTION AS OF RIGHT.

This discussion must begin by addressing why the Court of Appeals for the Twelfth Circuit applied the proper standard of review to a court's decision to grant

or deny a motion to intervene as of right under FRCP 24(a)(2). Under FRCP 24(a), a party can intervene in a civil action if they are (1) given an unconditional right to intervene by federal stature or (2) claim an interest relating to the property or transaction that is 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 the interest. Fed. R. Civ. P. 27(a)(1)-(2).

Since the ADA does not provide an unconditional right to intervene, the U.S. must seek intervention under FRCP 24(a)(2). The Attorney General made a proper motion to intervene under FRCP 24(a)(2). The U.S. established that: (1) its motion to intervene was timely; (2) its interests relate to the subject matter of the action; (3) it is situated so that the disposition of this action may potentially impair its interests; and (4) its interest is inadequately represented by existing parties in the action. *Illinois v. City of Chicago*, 912 F.3d 979, 984 (7th Cir. 2019). In accordance with the First, Second, Third, and Fourth Circuit Court of Appeals, the Court of Appeals for the Twelfth Circuit applied an abuse of discretion standard of review to the district court's determination that intervention was proper. R. at 25.

Under the abuse of discretion standard of review, the district court's decision must be upheld if the proper legal standard was utilized or the decision was not clearly erroneous. *See Brody,* 957 F.2d at 1115. The court of appeals will consider whether the district court failed to "exercise sound, reasonable, and legal decision-making" or the decision is "without rational explanation, inexplicably departs from

established policies or practices, or is based on insupportable conclusions." *Black's Law Dictionary* (12th ed. 2024), "abuse of discretion." In situations where the discretion of the trial court has been questioned, courts have held that a district judge's determination should not be "upset" unless the improper legal standard was applied, or the higher court is confident the decision is correct. *United States v. Hooker Chemicals & Plastics Corp.,* 749 F.2d 968 (2d Cir. 1984).

The abuse of discretion standard of review is appropriate because the district court should be awarded deference as they are better equipped to weigh the components of FRCP 24(a)(2). For example, when examining timeliness, a district court understands the case management and scheduling issues of their specific location. In *NAACP v. New York,* 413 U.S. 345, 369, the denial of a motion to intervene, which the court deemed untimely, was upheld under the abuse of discretion standard of review. This Court concluded that the district court did not abuse its discretion in denying the motion as untimely because the appellants failed to take swift action to protect their interests. *Id.* at 369. Here, the U.S. immediately filed their motion to intervene after the DOJ concluded its investigation. R. at 2. The district court's decision to permit the U.S. to intervene as of right cannot be overturned because the district court did not abuse its discretion as they applied the proper legal standard and their decision was rational. *NAACP,* 413 U.S. at 369.

Departing from the First, Second, Third, and Fourth Circuit Court of Appeals, the Ninth Circuit reviewed a district court's decision to grant or deny a motion to intervene under FRCP 24(a)(2) de novo. *People of State of Cal., ex rel.,*

Van de Kamp v. Tahoe Reg'l Plan. Agency, 792 F.2d 779 (9th Cir. 1986). The Ninth Circuit explained that a de novo review is warranted because the "issue primarily involves consideration of legal concepts in the mix of fact and law." *U.S. v. Stringfellow,* 783 F.2d 821, 826 (9th Cir. 1986), *vacated sub nom. Stringfellow v. Concerned Neighbors in Action*, 480 U.S. 370 (1987). However, this Court should not follow the Ninth Circuit because FRCP 24(a)(2) has been characterized as more of a standard rather than a bright-line rule. For instance, in *U.S. v. Hooker Chemicals & Plastics,* the Second Circuit affirmed a denial of an intervention as of right, noting that a district judge assumes the position of assessing whether the intervenor satisfies FRCP 24(a)(2). *Id.* at 991. Judge Friendly stated that "it simply cannot be" that a court hearing an appeal should have to "wade through" the massive amounts of information that the district judge has already ruled on. *Id.* Therefore, applying the abuse of discretion standard of review was proper as it provides the more rational approach.

Here, the court of appeals applied the proper legal standard when it affirmed the U.S.'s motion to intervene as of right. Under the abuse of discretion standard of review, the district court's decision must be upheld as the proper standard was utilized and the decision reached was not clearly erroneous. *See Brody,* 957 F.2d at 1115.

a. <u>The United States' Motion to Intervene Was Timely.</u>

Under FRCP 24(a)(2), a proposed intervenor must make a "timely" motion to intervene. *Illinois v. City of Chicago*, 912 F.3d at 984. Here, the U.S.'s motion to

intervene was timely, and no undue delay occurred that could have caused prejudice to Petitioner. In considering whether a motion to intervene is timely, courts will look at four factors: (1) the length of time the intervenor knew or should have known of his interest in the case; (2) the prejudice caused to the original parties by the delay; (3) the prejudice to the intervenor if the motion is denied; (4) any other unusual circumstances. *Grochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 797-98 (2013) (quoting *Sokagon Cippewa Cmty. v. Babbit*, 214 F.3d 941, 949 (2000)).

All factors weigh in Respondents' favor. With respect to the first factor, intervention is supported when the intervenor acts without delay upon recognizing that the case implicates its interests. *Heartwood, Inc. v. U.S. Forest Serv., Inc.,* 316 F.3d 694, 701 (2003). Upon the conclusion of the DOJ's investigation, the U.S. moved to intervene once it became evident that a ruling for Petitioners would conflict with its responsibility to enforce the standards of the ADA. This case is distinguishable from *Grochocinski,* where the Chief Executive Officer (CEO) of a financial consulting company was denied intervention in the company's contractual dispute with another party, a decision later affirmed by the Seventh Circuit. *Grochocinski,* 719 F.3d at 797. The court based the denial on the facts that the CEO was already heavily involved in the lawsuit behind the scenes and the motion to intervene was filed three years after discovery was granted. *Id.* Here, unlike *Grochocinski*, only pleadings and proposed schedules had been submitted to the

court and discovery is still in the very early stages. R. at 4. Therefore, the U.S. satisfied the first factor.

Petitioners do not challenge the first factor: that the U.S. acted promptly in assessing its interests and filing the motion to intervene. However, Petitioners take issue with the second factor: that the motion to intervene was untimely as it was clearly prejudicial by prolonging the litigation, generating more than $250,000 in additional attorneys' fees, and denying any possibility of an alternative resolution. R. at 33. However, by appealing the grant of the U.S.'s intervention of right by the Twelfth Circuit, Petitioners ignore the applicable standard of review. This Court has held that a denial of a motion to intervene due to untimeliness is reviewed for abuse of discretion, emphasizing that lower courts have discretion to determine timeliness. *NAACP v. New York*, 413 U.S. at 366. A decision will stand on review unless discretion has been clearly abused. *Id*.

Accordingly, Petitioners fail to demonstrate any basis for overturning the district court's proper exercise of discretion. The U.S.'s motion to intervene as of right comes at a stage of the proceedings where other courts have consistently granted motions. For instance, the Fifth Circuit granted a motion to a trade group that sought to intervene in a lawsuit between Wal-Mart and the Texas Alcoholic Beverage Commission as they satisfied Rule 24 (b)(2). *Wal-Mart Stores, Inc. v. Tex. Alcoholic Beverage Comm'n,* 834 F.3d 562, 565 (5th Cir. 2016). When addressing timeliness, the Fifth Circuit held that the motion was timely as the trade association sought the motion "before discovery progressed and because it did not

seek to delay or reconsider phases of the litigation that had already concluded." *Wal-Mart Stores, Inc.,* at 565–566. As stated before, the U.S. filed its motion to intervene early in the litigation when discovery had barely begun. Although the parties need to create a new scheduling order, there is no prejudice because all parties have sufficient time for discovery.

Under the third factor, the U.S. would not be prejudiced following a denial because they could bring a separate lawsuit against the Petitioners. However, this argument ignores the practical efficiency of addressing related claims in a single proceeding. *Norman v. Refsland,* 383 N.W.2d 673, 674 (Minn. 1983) granted a motion to intervene by an employer, Carver County. The county moved to intervene as of right because the plaintiff was the county sheriff. *Id.* The motion to intervene was affirmed as the county had subrogation and indemnification rights, even though the plaintiff asserted it would "interfere with the plaintiffs' ability to control their own lawsuit." *Id.* at 675. As with the U.S.'s motion to intervene, Carver County's motion was granted as a means of judicial economy because a separate lawsuit is not the best use of the courts' time or clients' funds. *Id.* at 678. Thus, the third factor leans more in Respondents' favor.

Finally, the fourth factor is irrelevant as there are no unusual circumstances for or against a finding of timeliness; the parties have not filed substantive motions, requested preliminary injunctive relief, or asked for expedited briefing.

b. The United States Has a Direct Interest in Effecting Compliance with the ADA.

The U.S. has an institutional interest in ensuring public entity compliance with regulations of the ADA. This position is not the source or target of Petitioners' opposition. More broadly, Petitioners assert that the U.S. lacks the ability to enforce Title II of the ADA via civil action and does not have an interest in the current civil litigation. R. at 2. Petitioners' position is incorrect. R. at 7. Franklin rests its case on statutory language of "any person." Petitioners claim the U.S. is not a person in the specific sense of the word and that the Attorney General is not explicitly granted the right to civil action. Thus, they argue the U.S. has no power to enforce its regulations by civil action. This interpretation is inconsistent with the ADA's purpose and federal government's role, the ADA's own statutory language, and the legislation from which this statute incorporates itself. The weight of such evidence favors an interpretation of Title II that fully adopts the "remedies, procedures, and rights" incorporated from prior legislation. This allows for U.S. civil action. Under the abuse of discretion standard of review, the Twelfth Circuit's decision is not clearly incorrect and should be affirmed.

i. The express incorporation in Title II of the ADA intends a direct adoption of all "remedies, procedures, and rights" afforded by prior legislation.

The dispute at hand focuses on the federal government's inherent ability to enforce Title II of the ADA. Following a violation of Title II ADA standards, the "remedies, procedures, and rights set forth in section 794a of Title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging

discrimination." 42 U.S.C. § 12133. The ADA incorporates section 505 of the Rehabilitation Act's governing enforcement. *Id.* The ADA provides no further definition as to what remedies, procedures, and rights are available. 42 U.S.C. § 12103. Section 505 further incorporates the remedies, procedures, and rights set forth in Title VI of the Civil Rights Act of 1964. 29 U.S.C. § 794a. Whether it be Title VI, the Rehabilitation Act, or Title II of the ADA, courts have consistently held that these "remedies, procedures, and rights" include the ability for the U.S. to file civil action. See *Nat'l Black Police Ass'n v. Velde,* 712 F.2d 569, 575 (D.C. Cir. 1983); *U.S. v. Baylor University Medical Center,* 736 F.2d 1039, 1042 (5th Cir. 1984); *U.S. v. Florida*, 938 F.3d 1221, 1248 (11th Cir. 2019).

Understanding past incorporated legislation is critical for determining its role in Title II of the ADA. Congress "normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute." *Lorillard v. Pons*, 434 U.S. 575, 581 (1978). Additionally, a court should determine the best reading of an express incorporation of prior legislation "in light of context, precedent, and statutory purpose." *Brown v. U.S.*, 602 U.S. 101, 119 (2024). These factors point to the conclusion that the ADA incorporated enforcement mechanisms available to persons under Title VI. Prominent among them is civil action by the federal government.

Title VI gives the federal government broad discretion in facilitating enforcement of its substantive standards. Compliance may be effected through fund termination or "by any other means authorized by law." 42 U.S.C. § 2000d-1.

Federal agencies and departments are required to enforce the substantive standards. *Id*. The Attorney General has been tasked with the duty to coordinate implementation and enforcement by these agencies. Exec. Order No. 12,250, 45 Fed. Reg. 72,995 (Nov. 2, 1980) (citing 42 U.S.C. § 2000d). In the government's view, termination of federal funds is the "ultimate sanction" under Title VI. 28 C.F.R. § 50.3. As such, alternative means of effecting compliance are to be sought before invoking such powerful punishment. *Id*. These alternatives include seeking voluntary compliance, administrative action, and court enforcement. *Id*. Here, specific statements describing court enforcement reveal a statuary implementation consistent with Respondents' position. The DOJ must participate in "the possibility of court enforcement" and continue enforcement when "litigation has begun." *Id*. Additionally, the possible bases for judicial enforcement include the specific enforcement of assurances, compliance with titles of the 1964 act, and intervention in a suit designed to secure compliance. *Id*.

The language of "by any other means authorized by law" in Title VI is to "preserve other means of action which were not expressly set out in the Act." *U.S. v. Marion Cty. Sch. Dist*., 625 F.2d 607, 612 (5th Cir. 1980). In *Marion Cty*., the Fifth Circuit upheld the Attorney General's power to bring a civil action to enforce Title VI contractual assurances. *Id* at 616. Such power was not expressly limited to contract actions. *Id.* at 617. The Fifth Circuit pointed to both the broad language of "by any other means authorized by law" and legislative history to corroborate their understanding that alternative means of enforcement are available under Title VI.

Id. at 612. Title VI clearly contemplates other enforcement schemes than those explicitly laid out. *Nat'l Black Police Ass'n*, 712 F.2d at 575. Prominent among them is civil action brought by the Attorney General. *Id.*

Similarly, the United States has brought suits to ensure compliance with the Rehabilitation Act. See *U.S. v. Bd. of Trustees for Univ. of Ala.*, 908 F.2d 740, 742 (11th Cir. 1990). In *U.S. v. Baylor University Medical Center,* 736 F.2d at 1042, the Fifth Circuit addressed the enforcement of section 504 of the Rehabilitation Act determining whether there had been a reception of federal funds. *Id.* at 1040. At no point was it argued that the U.S. lacked enforcement authority on the grounds it had filed an improper civil action. Rather, the Fifth Circuit explicitly held that a federal agency seeking enforcement may resort to "'any other means authorized by law' - including the federal courts." *Id.* at 1050.

Congress intended the regulations concerning section 505 of the Rehabilitation Act to "incorporate the substance" of Title VI complaint and enforcement procedures. *Consolidated Rail Corp. v. Darrone*, 465 U.S. 624, 634 n.15 (1984). In *Consolidated Rail Corp.*, this Court rejected the argument that incorporation of Title VI's "remedies, procedures, rights" injected new substantive requirements into the Rehabilitation Act. *Id.* This Court deferred to the interpretation set by the Department of Health, Education and Welfare. *Id.* The department intended the regulations promulgated with respect to procedures, remedies, and rights under § 504 to conform with those promulgated under Title VI." *Id.* at 635. This Court stated such deference will generally be given to

contemporaneous regulations issued by the agency responsible for implementing the congressional enactment. *Id.* at 634. Lastly, this Court noted that this interpretation fit into the remedial purpose of the Rehabilitation act. *Id.*

Consolidated Rail Corp. is particularly important here for two reasons. First, the Rehabilitation Act's incorporation of Title VI, of which the ADA's incorporation is identical, is an explicit adoption of the enforcement regulations regarding the enactment of such legislation. Second, there exists a general deference to an agency's interpretation of regulations formed contemporaneously to implement the congressional act. Both these factors directly determine what "remedies, procedures, and rights" are afforded to persons alleging discrimination under Title II of the ADA.

Congress's "unequivocal" adoption of the "remedies, procedures, and rights" under the Rehabilitation Act, and ultimately Title VI, define the boundaries of Title II legislation. *Barnes v. Gorman*, 536 U.S. 181, 189 n.3 (2002). In *Barnes*, parameters concerning remedies under Title VI and the Rehabilitation Act were defined on the basis of their status as spending clause legislation. These guidelines were directly applied to Title II of the ADA despite it not being spending clause legislation. *Id.* at 189–190. This Court understood that punitive damages were not available in private suits under Title VI and the Rehabilitation Act. *Id*. This Court found that the "remedies, procedures, and rights" of Title II were to be "coextensive with those available . . . under Title VI." *Id.* at 181. It naturally followed that punitive damages were similarly not available under Title II of the ADA. *Id.* at 189.

This Court understood that the source material of Title II's "remedies, procedures, and rights" governed that provision's proper scope. Thus, this Court adhered to the framework of previous legislation even though such guidelines were not explicit or inherent to Title II.

Here, like *Barnes*, Congress is imposing a framework for enforcement that was not explicitly provided for in Title II. This is completely consistent with the purpose of expressly referencing and incorporating other legislation. The enforcement of Title II need not be otherwise provided for in the legislation itself. It would be improper to undermine legislative intent just because Title II does not explicitly provide for a particular means of enforcement. Title II has effectively outsourced its enforcement scheme to the Rehabilitation Act and derivatively, Title VI. See *Consolidated Rail Corp. v. Darrone*, 465 U.S. at 635. Enforcement "by any other means authorized by law" is understood by previous legislation to allow for alternative enforcement mechanisms that are not explicitly laid out legislation, including U.S. civil action. See *Marion Cty.,* 625 F.2d at 612; *Nat'l Black Police Ass'n v. Velde,* 712 F.2d at 575; *Baylor University Medical Center,* 736 F.2d at 1050. Title II lacking explicit enforcement by U.S. civil action does not by itself deny persons the "remedies, procedures, and rights" already recognized and available under prior legislation.

Title II of the ADA permits the Attorney General to file civil action because the statute adheres "to the enforcement scheme set forth in Title VI." *U.S. v. Florida*, 938 F.3d at 1248 (citing *Smith v. City of Philadelphia*, 345 F. Supp. 2d 482,

490 (E.D. Pa. 2004)). In *U.S. v. Florida*, the Eleventh Circuit held that the statutory text of Title II clearly showed Congress's directive that the "remedies, procedures, and rights" available are the *same* as those under the Rehabilitation Act. *Id.* at 1242. Courts have "routinely concluded" that this identical adoption establishes the same Title VI grants of power to the Attorney General. *Id.* at 1248. Thus, Title II also allows for enforcement "by any other means authorized by law." *Id.* This includes the U.S. initiating a civil action. *Id.*

Additionally, Congress directed the Attorney General to "promulgate regulations . . . that implement" Title II and that they be consistent with the coordination regulations "applicable to recipients of Federal Financial assistance under [the Rehabilitation Act]." 42 U.S.C. § 12134(a)-(b). One pertinent regulation embodies this call for legislative consistency. In a subpart of compliance procedures governing Title II of the ADA, in "any action . . . commenced pursuant to this act . . . the court, in its discretion may allow the prevailing party, other than the United States, a reasonable attorney's fee." 28 C.F.R. § 35.175. It is an exact copy of language in the Rehabilitation Act. 29 U.S.C. § 794a(b). This conveys the understanding that the U.S. can be a party to an action commenced under Title II. The Eleventh Circuit emphasized that when an agency is empowered to regulate as necessary to further Congress's intent, "the validity of a regulation promulgated thereunder will be sustained so long as it is 'reasonably related to the purposes of the enabling legislation." *Florida*, 938 F.3d at 1230. In other referenced statutes, the Attorney General may sue. *Id.* at 1250. The same is true here. *Id.*

Here, *Florida's* rationale should govern. This decision is not an outlier. It is the logical conclusion of reasoning used in both *Consolidated Rail Corp.* and *Barnes*. Firstly, the ADA affords the same "remedies, procedures, and rights" available under Title VI and the Rehabilitation Act. Title II's incorporation is an identical process to the Rehabilitation Act's own incorporation. Both these acts adopted Title VI's enforcement allowing for termination of funds or "by any other means authorized by law." See 42 U.S.C. § 12133; 29 U.S.C. § 794a. The language of "by any other means authorized by law" preserved means of enforcement not explicitly laid out in Title VI. *Marion Cty.,* 625 F.2d at 612. Regulations concerning enforcement were similarly adopted by incorporated legislation. *Consolidated Rail Corp.,* 465 U.S. at 635. This included civil action by the Attorney General. *Nat'l Black Police Ass'n v. Velde,* 712 F.2d at 575. Title II adopted all the enforcement procedures of Title VI, explicit and implicit.

Secondly, the Attorney General has been empowered by Title II legislation to promulgate regulations that are consistent with those under the incorporated legislation. 42 U.S.C. § 12134(b). A level of deference to the validity of such interpretation is warranted so long as it is reasonably related to the purpose of legislation. *Florida*, 938 F.3d at 1230. It is more than reasonably related to the prevention of disability discrimination that persons have access to civil action by the federal government. The government owns "a central role in enforcing standards on behalf of" affected individuals. 42 U.S.C. § 12101. Civil action on behalf of private parties is directly related to the government's role in effecting

compliance with standards and deterring discrimination. *Id.* This interpretation of allowing for a wholesale adoption of such "remedies, procedures, and rights" is consistent with the context of the statute, court precedent, and statutory purpose.

It is unlikely that Congress opted to undercut legislative and judicial understanding of the provision with the phrase of "any person." Misplaced emphasis on the word "person" fails to understand the phrase in context and undermines the point of the provision. Even if the Attorney General is determined to not be a "person" under Title II of the ADA, it does not bar the U.S. from providing the same "remedies, procedures, and rights" afforded to "any person alleging discrimination." Title II affords a process for accessing such "remedies, procedures, and rights." For this provision to be implicated, a person must initially file a complaint of alleged discrimination. 28 C.F.R. § 35.170. From that point forth, the entire array of "remedies, procedures, and rights" are available to them, whether it be administrative remedies, private action, or civil action by the U.S. *on their behalf*. *Id.*

Termination of funds is improper here because the gravity of the penalty may be too heavy handed to properly serve affected individuals. The institutions at hand serve a vital role in helping those with disabilities. Simply cutting off funding to Franklin institutions does not solve the problem of improper institutionalization and punishes the private individuals for utilizing the statute made for their aid. The severely limiting interpretation by Petitioners is a slap in the face to the point

of Congress's express incorporation, purpose of such legislation, and role of the federal government in enforcement.

Finally, the lower courts' decisions cannot be overturned under the abuse of discretion standard. To satisfy this standard, Petitioners must show the lower courts utilized an improper legal standard or reached a clearly erroneous decision. That is not present here. The lower courts' rulings and rationale as to the available "remedies, procedures, and rights" under Title II of the ADA is not clearly incorrect. Allowing for U.S. intervention is supported by the statute, its sources of incorporation, legislative history, and judicial interpretation.

Here, there is a violation of ADA standards under Title II. As such, the U.S. has an institutional interest in effecting compliance with legislation for which it owns a "central role" concerning enforcement. 42 U.S.C. § 12101(b)(3). Because of Title II's incorporation of section 505 and by extension Title VI, the Attorney General has the power to file civil action on behalf of affected individuals.

ii. The ability for the United States to file civil action is consistent with the role and purpose of the federal government concerning the ADA.

In the ADA, Congress clearly states that a purpose of the legislation is to ensure "that the federal government plays a central role in enforcing standards . . . on behalf of individuals with disabilities." 42 U.S.C. § 12101(b)(3). Congress further cements this goal by delegating to the Attorney General explicit responsibility to "promulgate regulations" concerning the ADA. 42 U.S.C. § 12134(a). It can be

gathered that Congress envisioned an active federal government involved in the implementation and administration of the ADA in service of affected individuals.

Here, Petitioners' proffered interpretation of Title II of the ADA undermines the established role and purpose of the federal government. The federal government is to have a central role in *enforcing* the ADA. Petitioners may argue that the construction of regulations by the federal government is as central a role as one could be in regard to the ADA. But this misunderstands what promulgation entails. Promulgate means to put law into action or force. *Promulgate*, *Merriam-Webster*, https://www.merriam-webster.com/dictionary/promulgate (last visited August 23, 2025). By definition, promulgate encapsulates enforcement and not simply creation. The implementation and enforcement of the ADA rest in the hands of the federal government, specifically the Attorney General. The language of "any other means authorized by law" gives the government broad discretion concerning the proper means to enforce ADA standards *on behalf of* individuals with disabilities. Few avenues for enforcement could be more consistent with this statutory purpose than the Government's intervening of the civil action *on behalf* of Kilborn, Torrisi, Williamson, and any private individuals possibly affected by the parameters of Title II coverage.

Title II highlights the importance of civil litigation as a mechanism for enforcement. It forbids the exclusion from benefits of services, programs, or activities of a public entity or other discrimination by a public entity towards a qualified individual with a disability. 42 U.S.C. § 12132. The legislation's definition

of "public entity" is not limited to recipients of federal funding. *Id.* at § 12131. Thus, in some Title II cases, there is an inability to impose the "ultimate sanction" of fund termination otherwise available under Title VI. 28 C.F.R. § 50.3. Effecting compliance is then left to "any other means authorized by law." 42 U.S.C. § 2000d-1.

Civil action is a common and available way for the government to ensure compliance with Title VI, the Rehabilitation Act, and Title II of the ADA. Since fund termination is unavailable in many Title II cases, civil action is elevated to an "ultimate sanction" in practice. Civil action is not something that the government is quick to invoke. The compliance procedures are a lengthy process: a complaint must be filed, an investigation undertaken, voluntary compliance and negotiations sought. 28 C.F.R. §§ 35.170–35.173. It is only after a failure of voluntary compliance or unsuccessful negotiations that the designated agency shall defer to the Attorney General for appropriate action. *Id.* at 35.174. Even if fund termination is available, civil action allows for effective enforcement without such drastic means. Taking away U.S. civil action undermines the federal government's role in implementing the ADA's purpose to achieve and effect compliance by public entities, deter violation, and preserve the rights of affected individuals to whom they owe a responsibility.

c. <u>The Disposition of this Lawsuit Has the Potential to Impair the United States' Interests.</u>

Addressing the third element of FRCP 24(a)(2), a proposed intervenor must show that they are so situated that the disposition of this action may potentially impair its interests. As established above, the U.S. has a responsibility to enforce

compliance with the ADA. Through filing a motion to intervene on behalf of all persons in the country at risk of unnecessary institutionalization and segregation at Franklin hospitals, the U.S. is executing its duties assigned by Congress. 42 U.S.C. § 12132. The U.S.'s ability to fulfill that obligation would be compromised if it were denied the motion to intervene because filing an enforcement action in federal court is a method for the U.S. to "effect" compliance with the ADA. 42 U.S.C. § 2000d-1; *U.S. v. City & Cnty. of Denver,* 927 F. Supp. 1396, 1400 (D. Colo. 1996).

Additionally, the standard for establishing an impairment of interest is notably low. The burden demonstrated by the intervenor is "minimal," as "a would-be intervenor must show only that impairment of its substantial legal interest is possible if intervention is denied. *Ne. Ohio Coal. for Homeless and Serv. Emp. Intern. Union, Local 1199 v. Blackwell*, 467 F.3d 999, 1008 (6th Cir. 2006) (citing *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997)). For example, an organization representing the homeless and labor unions filed a lawsuit against the Secretary of State of Ohio, challenging Ohio's absentee ballot voter identification laws. *Ne. Ohio Coal. for Homeless and Serv. Emp. Intern. Union, Local 1199,* at 1007. The court found that Ohio's interests may be impaired as the outcome of the litigation does not preserve the status quo. *Id.* at 1006. Likewise, the U.S.'s failure to intervene could impair its ability to ensure that the ADA is enforced on behalf of all persons subject to discrimination.

While the U.S. could file a separate action to enforce the ADA, filing a motion to intervene is a more suitable course of action. Granted, the mere inconvenience of

filing a separate action is not considered a serious enough burden to justify intervention. *See Rosenshein v. Kleban,* 918 F. Supp. 98 (S.D.N.Y. 1996). However, Congress has articulated the purpose of the ADA as a way "to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities." 42 U.S.C. § 12101. Therefore, the district court reasonably interpreted the federal government's responsibility to file enforcement actions under Title II. Finally, Petitioners cannot meet the abuse of discretion standard because the lower courts were not clearly incorrect.

d. The United States' Interests Are Not Adequately Represented by the Three Private Plaintiffs in this Action.

Kilborn, Torrisi, and Williamson's respective claims do not fully represent the U.S.'s interests. In determining whether an intervenor's rights are adequately represented, courts will assess the interests of the intervenor and the existing parties. *Trbovich v. United Mine Workers of Am*., 404 U.S. 528, 538 (1972). The burden of the movant is minimal. [CITE] If the interest of the movant is not represented at all, then they are not adequately represented. 7C Fed. Prac. & Proc. Civ. § 1909 (3d ed.).

U.S.'s interests differ significantly from the interests of the private parties. Specifically, the U.S. represents and seeks relief for all persons in the country who are at risk of being unnecessarily institutionalized and segregated at Franklin hospitals. Under the ADA, Congress expressly charged the federal government with enforcing its standards through delegating the Attorney General to promulgate regulations. 42 U.S.C § 12101(b). In *Texas v. U.S.*, 805 F.3d 653, 664 (5th Cir. 2015)

Jane Does were allowed to intervene as of right when the state was inadequately representing their interests. The government confined their interests' on enforcing laws and maintaining a working relationship with the states that assist in detaining immigrants. *Id.* at 663. In contrast, the Does sought to remain in their homes, retain custody of their children, and obtain work authorization. *Id.* The obvious differing interests of parties in *Texas v. U.S.* are like the differing interests between the three private plaintiffs and the U.S. Here, the private plaintiffs are seeking individual relief that is open to a potential settlement, whereas the U.S. is seeking injunctive relief for a class of persons. As only a limited showing of inadequate representation is required, the U.S.'s motion to intervene should be affirmed.

CONCLUSION

Resolving this case does not require a novel approach. Title II of the ADA was created to protect individuals vulnerable to discriminatory treatment and guarantee their civil rights. Refusing to extend these protections to people at risk of institutionalization would frustrate that very purpose.

The government should not be precluded from intervening on behalf of individuals it owes a duty to protect. The Federal Rules of Civil Procedure specifically ensures a party the opportunity to intervene where their interests may be at risk. The U.S. must be afforded that same right.

For the aforementioned reasons, this Court should affirm the opinion below and hold that (1) a person at risk of institutionalization can maintain a claim for

discrimination under Title II of the ADA, and (2) the U.S. can enforce Title II of the ADA via civil action and satisfy all requirements of intervention as of right under Federal Rules of Civil Procedure 24(a)(2).

Dated: September 9, 2025

Respectfully Submitted,

s/ [OMITTED]

Attorneys for Respondent(s)

PROOF OF SERVICE

I declare that:

I am over the age of eighteen years and not a party to the within action; my business address is [omitted].

On September 9, 2025, I electronically served a copy of the attached BRIEF FOR THE RESPONDENT on the following interested parties:

Counsel for Petitioner

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Declaration was executed this 9th day of September 2025 at San Francisco, California.

s/ [OMITTED]