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,

— versus —

Sarah KILBORN, ET. AL.,

Respondents,

and

THE UNITED STATES OF AMERICA,

Intervenor-Respondents.

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

BRIEF FOR THE RESPONDENTS

Team 3410

Attorneys for the Respondents

QUESTIONS PRESENTED

I. Whether a qualified person at risk of institutionalization and segregation in a hospital in the future, who is not currently institutionalized but experienced past unsuitable segregation for reason of their disability, can sustain their claim for discrimination under Title II of the Americans with Disabilities Act?

II. Whether the United States can file a lawsuit, following a validated complaint and investigation, to enforce Title II of the Americans with Disabilities Act to maintain their interest relating to the relevant subject matter of a private Americans with Disabilities Act action under Federal Rule of Civil Procedure 24(a)(2)?

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The Opinion of the United States District Court for the District of Franklin is unreported but appears in the Record of Appeal at Pages 1-10, wherein the District Court GRANTED the United States' motion to intervene on behalf of the Plaintiffs, Sarah Kilborn, Eliza Torrisi, and Malik Williamson. The unreported Opinion of the United States District Court for the District of Franklin is found in the Record of Appeal at Pages 11-21, wherein the District Court GRANTED the Plaintiffs' and the United States' motion for summary judgment and DENIED the Defendants' motion for summary judgment. The Opinion of the United States Court of Appeals for the Twelfth Circuit is unreported but is contained in the Record of Appeal at Pages 22-39, wherein the Appellate Court AFFIRMED the judgment of the District Court. Specifically, it upheld the granting of the United States' and Plaintiffs' motion to intervene and their subsequent motion for summary judgment.

STATUTORY PROVISIONS INVOLVED

The following provisions of the United States Code are relevant in this proceeding: 42 U.S.C. §§ 12101—12103; 42 U.S.C. §§ 12132—12134; and 42 U.S.C. §§ 2000d—1. This case also involves the following Code of Federal Regulations: 28 C.F.R. §§ 35.130(a)—(d); and 28 C.F.R. app. B § 35.

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

This case is based upon a complaint filed by Sarah Kilborn, Eliza Torrisi, and Malik Williamson (Respondents) alleging discrimination by the State of Franklin Department of Social and Health Services (Petitioners) in violation of Title II of the Americans with Disabilities Act ("ADA"). R. at 1-2. The United States moved to intervene under the Federal Rules of Civil Procedure Rule 24(a)(2) upon finding the initial complaint to be substantiated. R. at 2.

Franklin's State Mental Health Facilities. Franklin is one of the United States' largest states, covering nearly 99,000 square miles, but is sparsely populated with less than 700,000 residents. R. at 15. Franklin used to have three community mental health facilities in Platinum Hills, Mercury, and Bronze until 2011 when the state legislature cut funding for the Department of Social and Health Services ("DSHS") by 20 percent. R. at 15. A community mental health facility can be defined as providing mental health services in a setting that allows patients to integrate into the community greater than patients that are institutionalized at hospitals. R. at 13. As a result of the budget cuts, the Mercury and Bronze community mental health facilities closed and the Platinum Hills' inpatient program eliminated. R. at 15-16. Although around 550,000 Franklin residents live more than two hours away from the Platinum Hills facility, the Mercury and Bronze facilities have not been reopened. R. at 15-16. Despite the state

legislature increasing the budget of DSHS by five percent in 2021, no discontinued services have been reinstated. R. at 16.

The Respondents' Suffering. Franklin residents Sarah Kilborn, Eliza Torrisi, and Malik Williamson have severe mental health disorders that have required periods of inpatient treatment throughout the years. R. at 23. Although their treatment plans have differed in accordance with their physicians' recommendations, all have needlessly suffered in inappropriate and extended institutionalizations due to Franklin's lack of available resources for their disabilities over the years. R. at 23. Their individualized experiences with the State's deficient mental health services are briefly described as follows.

Sarah Kilborn. Kilborn was diagnosed with bipolar disorder in 1997 and suffers from severe medication-resistant depressive episodes. R. at 12. After a self-harm attempt in 2002, Kilborn's physician recommended inpatient treatment. R. at 12. Kilborn voluntarily admitted herself that year to a state-operated facility, Southern Franklin Regional Hospital ("SFRH"), in her hometown of Silver City, Franklin, and remained there until 2004. R. at 12. Unfortunately, Kilborn's condition worsened over time and she was readmitted to SFRH in 2011. R. at 13. Though her physician twice determined that she was eligible for community-based treatment, once in 2013 and again after another two years of inpatient treatment in 2020, there were no state-operated community health facilities within three and a half hours of Silver City and she could not afford treatment at the only private

facility in the area. R. at 13. As a result, Kilborn remained institutionalized at SFRH from 2011 to 2015 and again from 2018 to 2021. R. at 13.

Eliza Torrisi. Torrisi was diagnosed with bipolar disorder in 2016 and despite treatment with medication and psychotherapy, she continued to suffer from severe manic episodes. R. at 14. After highly erratic, dangerous episodes in 2019, Torrisi's parents admitted her to Newberry Memorial Hospital ("NMH") in Golden Lakes, Franklin, for inpatient treatment. R. at 14. Although Torrisi's condition improved and her physicians recommended inpatient services at a community-based treatment center in May 2020, there were no community mental health facilities within four hours of her home that offered inpatient services. R. at 14. Inpatient services offered at community mental health facilities differ from those offered at hospitals in allowing patients to have a greater degree of socialization, like receiving frequent visitors, supervised outings, and interactions with other patients. R. at 14. Unfortunately, without inpatient services at a community-based services nearby, Torrisi remained institutionalized at NMH until May 2021, and was readmitted again in August 2021 until her release in January 2022. R. at 14.

Malik Williamson. Williamson, diagnosed with schizophrenia in 1972, has cycled through inpatient and outpatient services at multiple hospitals within Franklin for the past fifty years due to severe hallucinations and delusions. R. at 14. In 2017, Williamson's guardian and daughter admitted him to Franklin State University Hospital ("FSUH") in Platinum Hills based on its proximity to her home, giving her the opportunity to frequently visit her father. R. at 15. Although

Williamson's physician recommended that he transfer to a community mental health facility for inpatient treatment after two years of improvement, the Platinum Hills community mental health facility no longer offered inpatient treatment services. R. at 15. As Williamson's physician deemed his nearby familial support system as critical to his treatment, he remained institutionalized at FSUH despite the recommendation until his condition improved enough in June 2021 to transfer to outpatient care closer to his family. R. at 15.

The Respondents' Complaint. Kilborn, Torrisi, and Williamson (through his guardian) filed a complaint in February 2022 against the State of Franklin's DSHS and its secretary, Mackenzie Ortiz, alleging discrimination in violation of Title II of the ADA under 42 U.S.C. § 12132. R. at 2. The discrimination claim was based upon each of their improperly prolonged institutionalizations due to Franklin's singular state-operated community mental health facility being hours away from their homes (Kilborn and Torrisi) and lack of comprehensive inpatient services as recommended by their physicians (Torrisi and Williamson). R. at 1.

The United States' Involvement. The United States Department of Justice Civil Rights Division launched an investigation into the State of Franklin DSHS shortly after the complaint filed against them. R. at 2. The investigation found the claim of discrimination to be substantiated and in violation of Title II of the ADA. R. at 2. Shortly after completing the investigation, the United States promptly filed a motion to intervene under Fed. R. Civ. P. 24(a)(2). R. at 2. The motion came just three months after the Respondents filed their complaint against the State of

Franklin DSHS. R. at 2. The United States sought broader relief for all in Franklin who are at risk of being unnecessarily institutionalized and segregated at a Franklin DSHS hospital in the future. R. at 24.

II. NATURE OF PROCEEDINGS

The District Court. In February 2022, Kilborn, Torrisi, and Williamson, as the Plaintiffs, filed a complaint for injunctive relief against Franklin's DSHS as Defendants. R. at 16. Kilborn asserts Franklin's DSHS has discriminated against her and other Plaintiffs in violation of Title II of the ADA, namely 42 U.S.C. § 12132. R. at 2. On May 27, 2022, after completing an independent investigation into the Defendants' actions, the United States, through the Attorney General of the Department of Justice, filed a motion to intervene in the United States District Court for the District of Franklin on the Plaintiffs' behalf. R. at 2. The United States found the Plaintiffs' claim of discrimination to be substantiated. R. at 2. The United States included a proposed complaint against the Defendants alleging violation of Title II of the ADA for *all* who are at risk of being segregated and unnecessarily institutionalized at a Franklin DSHS hospital in the future, by failing to provide satisfactory community mental health facilities. R. at 2. The Plaintiffs consented to the motion to intervene, while Defendants, instead, filed a motion in opposition claiming the United States is unable to maintain a cause of action under Title II and therefore has no interest in the litigation that warrants intervention. R. at 2. The United States District Court for the District of Franklin GRANTED the

United States' motion to intervene under Fed. R. Civ. P. 24(a)(2), finding it had satisfied all elements required for intervention as of right. R. at 9.

In March 2024, the parties filed cross-motions for summary judgment in district court. R. at 11. The Plaintiffs moved for summary judgment on the assertion that the Defendants discriminated against them in violation of Title II of the ADA. R. at 11. The United States, as a Plaintiff-Intervenor, similarly moved for summary judgment in requesting relief for all in Franklin at risk of unnecessary institutionalization and segregation, to which the Defendants opposed and cross-moved for summary judgment on both motions. R. at 12. In agreeing with the Plaintiffs' and United States' contention that individuals at risk could sustain their discrimination claims, the District Court GRANTED their motions for summary judgment and DENIED the Defendants' motion. R. at 19-21.

The Twelfth Circuit Court of Appeals. On appeal to the United States District Court of Appeals for the Twelfth Circuit, Franklin's DSHS, as the Appellants, argued the district court erred in holding the United States may intervene as of right in an ADA case between two parties to enforce Title II of the ADA as it has an interest in the subject matter. R. at 23. The Appellants also argued against the ruling that individuals at risk of being institutionalized and segregated in the future can maintain a cause of action under Title II of the ADA. R. at 23. The appellate court AFFIRMED the district court's decision to grant summary judgment to the Appellees and the United States' motion to intervene under Fed. R. Civ. P. 24(a)(2). R at 29. The court of appeals found Title II of the

ADA incorporates the rights set forth in Section 505 of the Rehabilitation Act, which refers to Title VI of the Civil Rights Act and thus, as a matter of law, gives the United States an interest in, and the ability to, enforce Title II of the ADA. R. at 27. The court also, after reviewing for abuse of discretion, ruled that the district court correctly applied the legal standard to determine whether the United States can intervene as of right. R. at 25-26. The United States District Court of Appeals for the Twelfth Circuit AFFIRMED the holding of the district court in concluding a cause of action may be brought under Title II of the ADA by those who may be at risk of segregation. R. at 29. The appellate court went further to say the district court correctly joined the Second, Fourth, Sixth, Seventh, Ninth, and Tenth Circuits by not departing from such a well-established rule. R. at 29.

SUMMARY OF THE ARGUMENT

This Court should affirm the holding of the United States Court of Appeals for the Twelfth Circuit that individuals at risk of institutionalization can maintain an ADA discrimination claim. This Court should also affirm the appellate court's ruling that the United States properly intervened for their relevant interest in the subject matter. Therefore, the granted motion for summary judgment in favor of the Respondents and United States should be upheld.

I.

The United States Court of Appeals for the Twelfth Circuit was correct in affirming that a discrimination violation claim can be maintained without active

institutionalization. Title II of the ADA and its implementing regulations prohibit unjustified isolation of individuals with disabilities and require services in the most integrated setting appropriate. The closing of community-based mental health facilities and comprehensive programs unduly affects those who require such services and demands remedy.

As part of the ADA's "integration mandate," state mental health facilities must provide community-based treatment when recommended by professionals, when individuals do not oppose it, and when possible without fundamentally altering services. Based upon medical professionals' recommendations and Franklin's available financial resources, the Petitioners lack merits in asserting a "fundamental alteration" defense when reinstating previously existing mental health services would be appropriate.

The ADA protects individuals at risk of institutionalization. The guidance document provided by the Department of Justice ("DOJ") correctly asserts this as a supplement to rectify a vague regulation. By affirming this definition, the appellate court joins other circuit courts in its ruling. The Respondents have histories of repeated institutionalization and their substantiated claims of discrimination, like their disabilities, do not vanish upon their reintegration into society. The Petitioners' refusal to provide adequate services continues to violate Title II of the ADA and the prior judgments should be affirmed.

II.

The United States Court of Appeals for the Twelfth Circuit correctly affirmed the district court's ruling granting the United States to bring suit under Title II of the ADA as an Intervenor under Fed. R. Civ. P. 24(a)(2). Title II of the ADA was designed by Congress to be enforced by both private plaintiffs and the federal government. Decades of case law, combined with the statutory text and practice, confirm that the DOJ may bring enforcement suits against the Petitioners for its violations of Title II.

Title II of the ADA incorporates the remedies and procedures of the Rehabilitation Act, which in turn adopts the enforcement scheme in Title VI of the Civil Rights Act. Title VI language of "other means authorized by law" has long been understood to permit the DOJ to use litigation if necessary. DOJ's enforcement power was carried forward into Title II when Congress borrowed the framework of Title VI. Limiting the reading of "any person" to exclude the United States would be a misreading of 42 U.S.C. § 12133 and would make Congress's express finding of the government playing a central role in enforcement null and void. The United States has a duty to ensure that it remedies all violations of Title II of the ADA perpetrated by the Petitioners against all residents with disabilities.

The United States has an interest in this subject matter to ensure that all people with disabilities who reside in Franklin are not discriminated against. After concluding an investigation into the Title II violation claims, the United States moved swiftly to file a motion to intervene under Fed. R. Civ. P. 24(a)(2). The

appellate court correctly affirmed the district court's evaluation and granting of the motion. The United States demonstrated it had met all requirements under Rule 24(a)(2) when it promptly filed the motion, displayed that the prejudice to either party caused by the delay would be minimal, if any at all, and highlighted the substantial sovereign and regulatory interest in enforcing Title II. In showing that the exclusion of the United States from this litigation would impair the interest of people with disabilities residing in Franklin, the private plaintiffs alone inadequately represent its interest in this matter.

The appellate court did not find the district court applied an improper legal standard or clearly reached an incorrect decision when granting the United States summary judgment and motion to intervene. We implore the Court to uphold the United States Court of Appeals for the Twelfth Circuit ruling affirming the district court's decision, so as to ensure the United States, within its power granted by Congress, may enforce Title II of the ADA to the full extent of the law.

ARGUMENT

Standard of review. This appeal raises two issues that require differing standards of review. First, the legal determination for a claim of discrimination under Title II of the ADA is reviewed *de novo*. *United States v. Mississippi*, 82 F.4th 387, 391 (5th Cir. 2023). Second, the Supreme Court has held that a court's denial of a motion to intervene for timeliness is reviewed for abuse of discretion. *NAACP v. New York*, 413 U.S. 345, 366 (1973). Although the Supreme Court has not ruled

upon the motion to intervene as of right, a district court's decision is similarly reviewed on appeal for abuse of discretion. *Brody By & Through Sugzdinis v. Spang*, 957 F.2d 1108, 1115 (3d Cir. 1992).

I. THE ADA GUARANTEES THAT INDIVIDUALS "AT RISK" OF INSTITUTIONALIZATION AND SEGREGATION CAN MAINTAIN A DISCRIMINATION CLAIM UNDER TITLE II.

Title II of the ADA assures 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. The Attorney General of the United States is responsible to issue regulations implementing provisions within Title II of the ADA as provided by Congress. *Id.* § 12134(a). These regulations "shall be consistent with this chapter and with the coordination regulations . . . applicable to recipients of Federal financial assistance under [29 U.S.C. § 794]." *Id.* § 12134(b). One of the prohibitions on discrimination within the ADA, described as the "integration regulation," requires a "public entity [to] administer . . . programs . . . in the most integrated setting appropriate to the needs of qualified individuals with disabilities." *See* 28 C.F.R. § 35.130(d); *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. at 581 (1999). The "most integrated setting" is described as one that "enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible . . . ." 28 C.F.R. app. B § 35. This Court should affirm the appellate court's inclusion of individuals "at risk" of institutionalization as it most aligns with the ADA's regulations and intentions.

A. This Court Must Adhere to the ADA's Integration Mandate to Prevent Discrimination Against Qualified Disabled Individuals.

The ruling in *Olmstead v. L.C. ex rel. Zimring* determined that the integration regulation forbade discrimination that unjustifiably isolated the disabled. 527 U.S. at 597. *See also* 42 U.S.C. § 12101(a)(2) ("[H]istorically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem . . . ."). The holding further requires a state to provide community-based treatment for disabled persons when such services are appropriate, the affected persons do not oppose community-based treatment, and community-based services can be reasonably accommodated, taking into account the resources available to the entity and the needs of others who are receiving disability services from the entity. *Olmstead*, 527 U.S. at 607. Although a state's public entities must make "reasonable modifications" in policies, practices, or procedures to avoid discrimination, this power is not limitless. *Id.* at 603. *Olmstead* provides that a public entity may be relieved of its duties under the ADA's integration mandate with the "fundamental alteration regulation" if the entity can demonstrate that making the modifications would "fundamentally alter" the nature of the service, program, or activity. *Id. See* 28 C.F.R. § 35.130(b)(7). As the Respondents in the present case are actively seeking community-based treatment, the second factor is not in dispute. The following discussion will outline the first and third factors on whether such services are appropriate and if community-based and

inpatient services can be reasonably accommodated when taking into account the resources available and needs of others.

1. The services requested by the Respondents are appropriate because they are based upon the qualified physicians' recommendations.

Appropriateness of services is a treating physician's assessment rather than the state's. *Id.* at 602-03. In *Olmstead*, the respondents alleged that the state violated Title II of the ADA by confining them to improper hospital institutionalization by failing to provide mental health community-based care as their physicians recommended. *Id.* at 593-94. To enforce the integration mandate, the majority opinion ruled that the state may rely on the assessments of its professionals to determine whether an individual "meets the essential eligibility requirements" for community-based care. *Id.* at 602. Acknowledging that institutionalization need not be phased out entirely, the concurrence elaborated that "[t]he opinion of a responsible treating physician in determining the appropriate conditions for treatment ought to be given the greatest of deference." *Id.* at 610. In affirming that the affected individuals have prior histories requiring institutional care "from time to time" to stabilize their psychiatric conditions, continuously providing community-based services would be appropriate. *Id.* at 605.

The Petitioners' failure to provide community-based services deemed appropriate for qualified individuals by their physicians violates the ADA's integration mandate. The Respondents' physicians have all separately determined

that mental health community-based services are appropriate in treating their respective disorders, and their diagnoses are dynamic. R. at 12-15. The requested community-based services would be appropriate for all Respondents, whether requiring inpatient, outpatient, or partial-hospitalization care, should the need for treatment arise once again. Availability of community-based services within a state has been proven to decrease rates of inpatient hospitalizations. Tanya N. Wanchek, et al., *The Effect of Community Mental Health Services on Hospitalization Rates in Virginia*, 62 Psychiatric Services 194, 195 (2011). In giving greatest consideration to the recommendations of the state's professionals, the merits of community-based services being appropriate and available for non-institutionalized individuals is met.

2. The reinstatement of community-based and inpatient services can be reasonably accommodated because the resources available to the Petitioners meet the needs of the affected disabled individuals.

The integration mandate requires community-based services to be reasonably accommodated when factoring availability of resources and the needs of other disabled people receiving services. *Mississippi*, 82 F.4th at 394. The United States brought forth a lawsuit against the state of Mississippi for alleged breaches of the ADA within its mental health care system, specifically whether the integration mandate was violated with individuals that were unjustifiably institutionalized. *Id.* at 390. Although the court ruled that the government's investigation was overbroad

in scope and initiated without clear reason, it agreed that the state of Mississippi violated Title II by moving too slowly to incorporate community-based mental health care within its mental health system. *Id.* at 397. The court differentiated Mississippi's case from *Olmstead* as there was no evidence that any individual in the state was "inappropriately" committed beyond their treating physician's opinions and the district court's proposed remedy for institution-wide changes only relied upon a survey regarding the "risk of institutionalization." *Id.* at 394-96. *See also Id.* at 402 (Ho, J., concurring) ("[T]he [ADA] is premised on actual violations, not statistical risks."). The state could not unjustifiably isolate individuals with mental disabilities, but the district court's injunction was "intrusive and unworkable" and required "far more" than what would be required to comply with Title II. *Id.* at 401.

By failing to provide community-based services, the Petitioners are violating the ADA's integration mandate when available resources exist to implement them. Unlike *Mississippi*, the United States' involvement in the present case began after the Respondents' initial suit was filed and violations were found through investigation. R. at 24. Although the "risk of institutionalization" remains with the Respondents and other Franklin residents, the harm has been actualized through past physician-recommended institutionalizations of the Respondents when community-based services were more appropriate but unavailable. R. at 11-12. The sweeping injunction in *Mississippi* to adjust their entire mental health care system differs greatly from the Respondents' defined scope in their request of reinstating

services that previously were available. R. at 15-16. Applying the decision from *Mississippi* in the present controversy is inappropriate when the facts at issue mirror closer to those decided upon in *Olmstead*.

3. The Petitioners cannot sustain a fundamental alteration defense because of its foundation on alleged "budgetary constraints."

A fundamental alteration defense must stand on the merits in the face of an alleged "integration regulation" violation. *Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175, 1184 (10th Cir. 2003). In *Fisher*, the plaintiffs alleged violation of the integration mandate due to the defendants' decision to limit their waiver program to only five prescription medications per month regardless of medical necessity. *Id.* at 1177. Due to underlying medical and financial factors, the plaintiffs argued that the change would force them out of their existing communities into nursing homes to receive medically necessary care. *Id.* at 1177-78. Although the state's financial crisis was a consideration for a fundamental alteration, the inability to provide "reasonable" modifications on this basis alone did not constitute a defense. *Id.* at 1182. In acknowledging that the cost of institutional care is "nearly double" that of community-based care, eliminating the waiver program reduction did not constitute a fundamental alteration that the state would be unduly burdened to reorganize. *Id.* at 1183.

The Petitioners' alleged budgetary constraints in reimplementing community-based care are without merits and does not amount to a fundamental alteration defense. The services the Respondents require are not novel, with

previously broader inpatient and community mental health facilities available. R. at 15-16. Despite the budget decrease in 2011 that triggered the closing of the Mercury and Bronze facilities and elimination of the Platinum Hills inpatient program, no services were reinstated upon budget increases ten years later. R. at 15-16. The costs of providing appropriate, recommended care financially burdens the state to a lesser extent than the heavy personal burden and consequences the Respondents suffer from without access. R. at 23. Similarly to *Fisher*, the Petitioners are unable to demonstrate that expanding state mental health care in the limited capacity to remain compliant with the integration mandate would constitute a fundamental alteration.

B. The ADA and Department of Justice Intends to Include Those "At Risk" Under Title II and Other Interpretations are Unfounded.

The legal question of whether those who are at risk of institutionalization and segregation may sustain a cause of action under Title II of the ADA for discrimination is to be reviewed *de novo*. R. at 29. *See also Mississippi*, 82 F.4th at 391. As previously stated, the ADA requires a public entity to "administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons." 28 C.F.R. § 35.130(d). After the *Olmstead* decision, the DOJ issued a guidance document affirming that the ADA and *Olmstead* "extend to persons at serious risk of other segregated settings." U.S. Dep't of Just., *Statement of the Department of Justice on the Integration Mandate of Title II of the ADA and Olmstead v. L.C.* (February 25, 2020)

https://archive.ada.gov/olmstead/q&a_olmstead.htm. The present controversy relies upon the interpretation of when "administer" applies to "at risk" individuals as the DOJ guidance document surmises to uphold.

1. **The Department of Justice's guidance document should be afforded *Auer* deference because it infers correct intent in an ambiguous statute.**

Deference is afforded to an agency's documents that resolve the same agency's prior regulatory ambiguities. *Auer v. Robbins*, 519 U.S. 452, 462-63 (1997). The ambiguous provision at issue in *Auer* involved a provision of the Fair Labor Standards Act: whether an employee's pay is "subject to" disciplinary or other deductions throughout the duration of one's employment, or only when actively threatened with pay reduction. *Id.* at 459-60. The Supreme Court ruled that because the regulation is of its own jurisprudence, under the Secretary of Labor, the petitioners' broader interpretation of deductions throughout employment was correct as the manual itself did not "effectively communicate" otherwise. *Id.* at 462. In other words, the employees at issue were not required to bear the disadvantageous interpretation of an ambiguous statute.

Here, the ambiguity of whether the term "administer" applies to disabled individuals actively institutionalized, as the Petitioners believe it to be, or to those "at risk" of institutionalization is one that has been resolved in prior case law and can be inferred from the regulatory agency's intent. The Fourth Circuit agreed with the DOJ's guidance document's broader definition of "administer" as it is the

department tasked with implementing it. *Pashby v. Delia*, 709 F.3d 307, 322 (4th Cir. 2013), *abrogated on other grounds by Stinnie v. Holcomb*, 77 F.4th 200 (4th Cir. 2023), *abrogation overruled by Lackey v. Stinnie*, 145 S. Ct. 659 (2025). *See also Olmstead*, 527 U.S. at 597-98 ("Because the Department is the agency directed by Congress to issue regulations implementing Title II, its views warrant respect." (citation omitted)). Other circuit courts have held the same interpretation of the DOJ's guidance document. *See Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 979 F.3d 426, 460-61 (6th Cir. 2020); *Steimel v. Wernert*, 823 F.3d 902, 911 (7th Cir. 2016); *Davis v. Shah*, 821 F.3d 231, 263 (2d Cir. 2016). The DOJ affirmed in a filing brief in *M.R. v. Dreyfus* that the interpretation promulgated in the guidance document is still one that it holds, and the Ninth Circuit agreed in its ruling. 697 F.3d 706, 734-35 (9th Cir. 2012). One of the primary purposes of the ADA is "to provide clear, strong consistent, enforceable standards addressing discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(2). The more comprehensive definition given with the DOJ guidance document aligns with the original intention with the ADA and is more legally sound than a limited, unclear reading without it.

2. The Department of Justice's guidance document is appropriately applied because past precedent and "good law" still relies upon it.

Despite application of the *Auer* deference to the DOJ's guidance document be reversed, myriad case law still upholds the inclusion of individuals "at risk" of institutionalization as a goal of the ADA's integration mandate that could

withstand judicial review. In *Olmstead*, one of the Respondents in the case was no longer institutionalized a few months after the district court opinion and retained legal standing for the subsequent litigation. 527 U.S. at 593. *See also Fisher*, 335 F.3d at 1181 ("[P]rotections 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."). Although the Respondents in the present case are not currently receiving community-based treatment or institutionalization, their present disabilities that require differing degrees of treatment over time demonstrates the current controversy as "capable of repetition, yet evading review" and therefore not rendered moot. *Olmstead*, 527 U.S. at 594 n.6. This differs significantly from *Mississippi* where no individuals were identified within the parties represented to have suffered from discrimination and the risks posed were hypothetical. 82 F.4th at 394. In the present controversy, the Respondents are determined to have long-term mental health disorders by their medical professionals and all demonstrate a past history of improperly extended institutionalization. R. at 12. If the DOJ's guidance document is not afforded the *Auer* application, there is still no legal precedent in case law that relegates "at risk" individuals who have been previously institutionalized as unable to pursue discrimination claims under the ADA's integration mandate without active segregation. Therefore, the Court should uphold the appellate court's decision and not stray from the precedent determined in other circuit courts.

II. THE UNITED STATES RETAINS THE POWER TO LAWFULLY BRING SUIT TO ENFORCE TITLE II OF THE ADA AND THUS HAS A VAST INTEREST IN THE SUBJECT MATTER OF A PRIVATE ACTION UNDER FED. R. CIV. P. 24(A)(2).

Title II of the ADA does not define or specify what "remedies, procedures, and rights" are available. 42. U.S.C. §§ 12103, 12133. Instead, it incorporates the "remedies, procedures, and rights" in Section 505 of the Rehabilitation Act, which also incorporates those in Title VI of the Civil Rights Act. 42 U.S.C. § 12133. Title VI strictly prohibits discrimination by "any program or activity receiving federal assistance." 42 U.S.C. § 2000d. Agencies providing federal assistance may ensure "[c]ompliance with any requirement adopted pursuant to this section . . . (1) by the termination of or refusal to grant or continue assistance under such program . . . or (2) by any other means authorized by law . . .." 42 U.S.C. § 2000d-1. Years before the enactment of the ADA, courts had understood the phrase "by any other means authorized by law" to authorize the Attorney General to bring suits for enforcement. *United States v. Marion Cnty. Sch. Dist.*, 625 F.2d 607, 612 (5th Cir. 1980), *cert. denied Marion Cnty. Sch. Dist. v. United States*, 451 U.S. 910 (1981). S*ee United States v. City & Cnty. of Denver*, 927 F. Supp. 1396, 1400 (D. Colo. 1996) (holding Congress, by incorporating Title VI of the Civil Rights Act, permits the United States to ensure compliance with the Act and sue those who receive federal funding and are in violation).

A. Denying the United States the Right to File a Lawsuit Under Title II Would Render Congress's Findings Meaningless.

We implore this Court to uphold the appellate court's ruling allowing the United States to bring suit under Title II of the ADA. Congress specified in the ADA that the United States plays "a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities." 42 U.S.C. § 12101(b)(3). When incorporating sections of a previous law into a new law, "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, Div. of Loew's Theatres, Inc. v. Pons*, 434 U.S. 575, 581 (1978). *See also Bragdon v. Abbott*, 524 U.S. 624, 645 (1998) (finding that "[w]hen administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its administrative and judicial interpretations as well . . . ."). The statute is clear, and we "must presume that a legislature says in a statute what it means and means in a statute what it says." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). Petitioners' view would limit the DOJ's "central role" to mere oversight through funding terminations only.

The Petitioners' actions give clear meaning to why Congress included the language and remedies it did. The Petitioners' decisions of eliminating programs and closing community health facilities potentially affected thousands in need. R. at 15-16. After the Franklin legislature's slashing the funding for DSHS by twenty percent in 2011, the Petitioners' chose to close two of the three community health facilities and eliminate the inpatient program at Platinum Hills due to the cost and

the fact it served the fewest amount of people. R. at 15-16. This decision left over five hundred thousand residents more than two hours away from the nearest community health facility. R. at 15. In 2021, the Petitioners received a five percent budget increase, which could have been utilized to reopen the previously closed facilities. R. at 16. Instead, the Petitioners chose not to utilize the funds to re-open the Mercury or Bronze community mental health facilities, leaving hundreds of thousands of Franklin residents still hours away from the nearest community mental health facility. R. at 16. The actions taken by the Petitioners show a clear violation of Title II of the ADA and confirm the reasons why Congress envisioned an active federal role in ensuring compliance and remedies. Without this oversight, the Petitioners would continue to violate Title II of the ADA by refusing to provide appropriate services to disabled residents and instead attempt to quash the smaller number of private lawsuits from individuals as they arose.

B. The Petitioners' Argument That the United States is Not a Person in Terms of the Statute and Therefore Cannot File a Lawsuit to Enforce Title II is Erroneous, Not in Line With Statutory Text, or Case Law.

The Petitioners contend that only "a person" can bring suit under Title II. R. at 7. By narrowing the remedies to only individuals, it is a clear attempt to undermine the Attorney General of the United States' role in promulgating Title II regulations. *See* 42 U.S.C. § 12134(a) (requiring the Attorney General to promulgate regulations for the ADA); *Wisconsin Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 750-

51 (7th Cir. 2006) (explaining the Attorney General's role, given by Congress, in promulgating regulations for Title II of the ADA).

Congress knew that leaving enforcement to private parties only would exacerbate the very discrimination the ADA was trying to eradicate. In an effort to ensure the standards of the ADA are enforced, Congress states that the United States has "a central role in enforcing the standards established in *this chapter on behalf* of individuals with disabilities[.]" 42 U.S.C. § 12101(b)(3) (emphasis added).

Congress has historically used the phrase "any person" to include the United States. In the Fair Housing Act, courts have recognized the DOJ as a "person aggrieved" and therefore authorized to sue. *United States v. Scott*, 788 F. Supp. 1555, 1561 (D. Kan. 1992). The district court correctly applied the meaning of "any person" in Title II to include the Attorney General of the United States and further ensured Congress's findings were not meaningless.

1. The Eleventh and Twelfth Court of Appeals correctly interpreted the statutory language in Title II of the ADA to allow the United States to bring an enforcement action against defendants.

The Attorney General has the authority to bring a civil enforcement action under Title II of the ADA. *United States v. Florida*, 938 F.3d 1221, 1248 (11th Cir. 2019), *reh'g denied United States v. Sec'y Fla. Agency for Health Care Admin.*, 21 F.4th 730 (11th Cir. 2021), *cert. denied Florida v. United States*, 143 S. Ct. 89

(2022). After concluding a six-month investigation, the DOJ found that Florida had failed to meet its obligations under Title II of the ADA when it unnecessarily institutionalized hundreds of children in nursing homes. *Id. at 1224***.** The DOJ filed suit under Title II of the ADA against Florida when it could not obtain voluntary compliance. *Id. at 1225***.** Florida argued that the Attorney General did not have the power under Title II because it was not a person alleging discrimination, nor part of the class of whom Title II gives enforcement authority. *Id.* at 1227. The Eleventh Circuit rejected this argument, holding that "[t]he Attorney General has the authority to act 'by any other means authorized by law' to enforce Title II, including initiating a civil action." *Id.* at 1248.

The district court was correct in applying the ruling of *United States v. Florida*, authorizing the DOJ to bring suit under Title II, when granting the United States' motion for summary judgment. R. at 28. Like in *Florida*, the United States joined suit against the Petitioners after an investigation concluded that the discrimination claims for violating Title II of the ADA to be substantiated. R. at 2. The United States Court of Appeals for the Twelfth Circuit reached the same conclusion as the Eleventh Circuit when it affirmed Congress's intention for the United States to bring suit as an enforcement action under Title II of the ADA. R. at 28. We ask this Court to endorse the same interpretation of Title II of the ADA and affirm the ruling of the appellate court in allowing the United States to file an enforcement action against the Petitioners.

C. The United States Has Proven and the Court of Appeals Has Affirmed Its Interest Relating to the Subject Matter of a Private ADA Action under Fed. R. Civ. P. 24(a)(2).

The Supreme Court must uphold the appellate court's ruling in affirming that the United States' motion to intervene has met all requirements of Federal Rules of Civil Procedure (Fed. R. Civ. P.) Rule 24(a)(2). The court of appeals correctly applied the First, Second, Third, and Fourth Circuit of appeals for review of abuse of discretion. *See, e.g., Int'l Paper Co. v. Town of Jay*, 887 F.2d 338, 344 (1st Cir. 1989); *Am. Lung Ass'n v. Reilly*, 962 F.2d 258, 261 (2d Cir. 1992); *Brody*, 957 F.2d at 1115; *In re Sierra Club*, 945 F.2d 776, 779 (4th Cir. 1991). Prior to this, the Supreme Court had only held that if a court's motion to intervene is untimely, it is reviewed for abuse of discretion. *NAACP,* 413 U.S. at 366. As of now, the Supreme Court has not issued a ruling on the standard of review that applies if a court has granted a motion to intervene under Fed. R. Civ. P. Rule 24(a). The appellate court correctly denotes that the circuit courts have historically disagreed on the issue. *See* 2 Moore's Manual: Federal Practice and Procedure, § 14.124 [5][b].

A potential intervenor is provided with two avenues under the Fed. R. Civ. P. in which they may intervene in a lawsuit: intervention as of right and permissive intervention. Fed. R. Civ. P. 24(a)-(b). The district court found that the United States is entitled to intervene as of right; therefore, discussion or ruling on permissive intervention is not needed. R. at 9. Fed. R. Civ. P. 24(a) states the court "must" permit someone to intervene as of right who is: (1) given an unconditional

right to intervene by a federal statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest. The United States does not have an unconditional right to intervene granted in the ADA. *See* 42. U.S.C. § 12101 *et seq*. The United States has sought, and the appellate court has correctly granted, intervention as of right under Rule 24(a)(2). R. at 22-28.

1. The United States satisfied all conditions under Fed. R. Civ. P. 24(a)(2).

Satisfying Rule 24(a)(2) requires a proposed intervenor show: (1) the motion for intervention is timely; (2) must show an interest relating to the subject matter of the action; (3) show the disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interests are not adequately represented by the existing parties. *See, e.g., State of Illinois v. City of Chicago*, 912 F.3d 979, 984 (7th Cir. 2019); *Wal-Mart Stores, Inc. v. Tex. Alcoholic Bev. Comm'n*, 834 F.3d 562, 565 (5th Cir. 2016).

2. The United States met all requirements for timeliness when it promptly filed its motion to intervene three months after the initial complaint and before any substantial movement in the case had begun.

A court considers four factors when determining whether a motion is timely: (1) the length of time the intervenor knew or should have known of its interest in the case; (2) prejudice caused to existing parties by the delay; (3) prejudice to the intervenor if denied; (4) all other unusual circumstances. R. at 3 (citing G*rochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 797-98 (7th Cir. 2013) (internal quotations and citations omitted)).

The appellate court was correct in affirming the analysis performed by the district court on the timeliness of the motion filed by the United States. The United States promptly filed its motion to intervene on May 27, 2022, slightly over three months after the complaint was filed. R. at. 2. The motion came swiftly after the DOJ completed its investigation into the Petitioners for violating Title II of the ADA. R. at 2. The parties were still in the early stages of the pleadings, and discovery had barely begun. R. at 4. As the United States Court of Appeals for the Twelfth Circuit pointed out, the district court was in a better position to determine if the motion was timely due to its handling of scheduling and case management on a daily basis. R. at 25.

In reviewing the second factor of timeliness, the Respondents consented to the motion by the United States, knowing it could cause a delay. R. at 4. As they were in the early stages of litigation, the delay, if any, will not cause prejudice to any party. R. at 4. Although the appellate court's dissent focuses on the extensive record collection required for the present case, the motion did not delay or cause prejudice to the existing parties; rather, it provided an expedited method through

which the Petitioners can resolve matters swiftly and save costly litigation from multiple individual cases. R. at 32-33. The district court also correctly points out that the Petitioners did not raise the argument that they would be prejudiced by any delay if the United States is granted the right to intervene. R. at 4.

The district court further correctly applied the third and fourth factors of timeliness when it ruled the third factor as "largely neutral" and the fourth as a finding of nothing unusual about this case. R. at 3-4.

3. The United States has shown it has a significant interest in ensuring it protects all persons residing in Franklin with disabilities from Petitioners' violations of Title II of the ADA.

The United States easily meets the standard of Rule 24(a)(2), which only requires that the interest be direct, substantial, and legally protectable. *Wal-Mart*, 834 F.3d at 565-66. Congress has expressly identified the federal government as playing a "central role" in enforcing the ADA's standards. 42 U.S.C. § 12101(b)(3). The sovereign responsibility of the DOJ in ensuring compliance is clearly a protectable interest. The appellate court correctly upheld the district court's ruling allowing the United States to enforce Title II. R. at 28.

The Petitioners contend that the United States does not have an interest relating to the subject matter of this action due to language in Title II of the ADA which refers to "*any person alleging discrimination* on the basis of disability . . .." 42

U.S.C. § 12133 (emphasis added). This argument, as previously explained, misreads 42 U.S.C. § 12133. Congress intentionally incorporated into Title II the "remedies, procedures, and rights set forth in Section 505 of the Rehabilitation Act," knowing those provisions were comprised within Title VI of the Civil Rights Act. 42 U.S.C. § 12133. Allowing this argument to stand would, in turn, greatly impair the DOJ's ability to protect the people Title II was intended for. As the district court properly concluded, the United States has a substantial interest in this matter to ensure agencies receiving federal funds are in compliance with all federal civil rights and disability laws. R. at 7. The United States also has an interest in this matter to ensure not only that the Respondents are protected, but also that all other disabled persons similarly situated in Franklin are protected as well. R. at 7.

The interest of the United States in this legislation can be seen through the lack of available vital resources to the Respondents. R. at 12-16. As stated earlier, Franklin is a state with nearly seven hundred thousand residents, including more than five hundred thousand who live over two hours away from a state community mental health facility. R. at 15. Franklin's DSHS saw a budget increase in 2021, but has yet to utilize the funds to reopen community health facilities in underserved areas. R. at 16. With the Petitioners failing to resolve the violation, curing it falls under the responsibilities assigned to the United States to ensure that public entities comply with and are appropriately held accountable for violating the ADA and its implementing regulations. 42. U.S.C. § 12132; 28 C.F.R. § 35.130.

4. The United States will be prejudiced if not allowed to intervene.

For the reasons stated above, it is clear that the United States has a substantial interest in this matter regarding enforcing compliance with the ADA. Fed. R. Civ. P. 24(a)(2) requires only an intervenor to show whether the "disposition of this action may, as a practical matter, *impair or impede* their ability to protect their interest". *Utah Ass'n of Ctys. v. Clinton*, 255 F.3d 1246, 1253 (10th Cir. 2001) (emphasis added). Courts have recognized the possible impairment of a stare decisis ruling on governmental interests in statutes and regulations. *Ne. Ohio Coal. for Homeless and Serv. Emps. Intern. Union, Local 1199 v. Blackwell*, 467 F.3d 999, 1008 (6th Cir. 2006). Congress has explicitly tasked the United States with enforcing the ADA. *See* 42 U.S.C. § 12132. Not allowing the United States to participate in this matter could allow for adverse precedent on the scope of Title II and the United States' power to enforce the law nationwide.

Apart from precedent, excluding the United States in this matter would prevent it from obtaining the systematic relief necessary to remedy the Petitioners' violations. This concern alone demonstrates that the United States has met its burden to show exclusion of them in this case would impair their ability to protect their interest. While the Respondents seek injunctive relief for themselves, the United States seeks to ensure all of the Petitioners' policies and procedures are in line with the ADA to ensure that anyone with disabilities will not be unnecessarily institutionalized. R. at 24. By not allowing the United States to intervene, the

Petitioners' problematic, systemic practices will continue unchecked, and the broader interest of all people with disabilities residing in Franklin remains unprotected.

5. The United States Court of Appeals for the Twelfth Circuit correctly found that a private party could not adequately represent the United States.

The appellate court and district court both agree that the private parties do not and cannot adequately represent the United States' interest in enforcing Title II. R. at 28. The Supreme Court imposes an applicant to show only a minimal burden that their interest may not be adequately met to satisfy this requirement. *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 n.10 (1972). The Respondents' personal interest in obtaining community mental health facilities is narrowed, while the United States' interests encompass all disabled persons in Franklin. R. at 2. The United States seeks to ensure the Petitioners comply with Title II of the ADA and to guarantee that all rights granted to Franklin residents with disabilities are not trampled upon. R. at 2. We implore the Court to allow the DOJ, on behalf of the United States, to perform its duties given by Congress in 42 U.S.C. § 12134, which include enforcing Title II regulations.

CONCLUSION

This Court should AFFIRM the Twelfth Circuit's holding that the Respondents can sustain their claim of discrimination under Title II of the ADA as individuals "at risk" of institutionalization. The Petitioners' refusal to reinstate adequate mental health services continues to violate the Respondents' rights and defies the ADA's primary objective of ensuring nondiscrimination for disabled individuals. When structuring the ADA, Congress ensured the United States would play a central role in enforcing Title II. By incorporating Section 505 of the Rehabilitation Act and Title VI of the Civil Rights Act, it ensured the Department of Justice's ability to enforce Title II. Additionally, the United States has demonstrated it has a significant interest relating to the subject matter and has met all four elements required to satisfy Fed. R. Civ. P. 24(a)(2).

Respectfully submitted,

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Attorneys For Respondents