No. 25-140

IN THE

Supreme Court of the United States

OCTOBER TERM 2025

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

PETITIONERS,

v.

Sarah Kilborn, et. al.,

RESPONDENTS,

and

The United States of America

INTERVENOR-RESPONDENTS,

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

BRIEF FOR PETITIONER

TEAM 3413
Attorneys for Petitioner

QUESTIONS PRESENTED

1. Whether 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 Americans with Disabilities Act.

2. Whether the United States has the authority to enforce Title II of the Americans with Disabilities Act and thus would be permitted to intervene by right in a Title II lawsuit between two private parties under Federal Rule of Civil Procedure 24(a)(2).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

United States Supreme Court Cases

United States Court of Appeals Cases

United States District Court Cases

Statutes

Other Authorities

OPINION BELOW

The opinion of the United States District Court for the District of Franklin regarding the United States's Motion to Intervene is unreported but appears on pages 1-10 of the record where the District Court GRANTED the United States's Motion to Intervene. The opinion of the United States District Court for the District of Franklin regarding summary judgement is unreported but appears on pages 11-21 of the record where the District Court GRTANTED summary judgement in favor of the Plaintiffs and the United States. The opinion of the Twelfth Circuit Court of Appeals, issued by Chief Judge Okpara, is unreported but is reproduced in the record on pages 22-38 where the Circuit Court AFFIRMED the District Court's judgment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Federal Rule of Civil Procedure 24(a)(2) provides:

> On timely motion, the court must permit anyone to intervene who: claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing 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.

2. 42 U.S.C. §12133 provides:

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

STATEMENT OF THE CASE

Nature of Proceedings

The District Court. Respondents filed a complaint for injunctive relief against Petitioners in February 2022 alleging that Petitioners violated Title II of the ADA, 42 U.S.C. § 12132. R. at 23. After the complaint, the United States Department of Justice Civil Rights Division determined that the State of Franklin Department of Social and Health Services was not in compliance with Title II. R. at 23. The district court granted the United States filed a motion to intervene on Respondents' behalf. R. at 24. The United States' complaint includes injunctive relief for all those in the State of Franklin at risk of being institutionalized in the future. R. at 24.

First, the parties filed crossmotions 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 24. The district court granted Respondents' motions for summary judgment and denied Petitioners' motion for summary judgment. R. at 24. A four-week bench trial then commenced and the court ruled that Respondents were at risk of future institutionalization and segregation. R. at 24. The court-issued order required Petitioners to submit a proposed plan within three months explaining how it will correct the violations and ensure Respondents will not be institutionalized in the future if they meet the test outlined in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999). R. at 24.

Twelfth Circuit Court of Appeals. The Twelfth Circuit Court of Appeals affirmed the District Court decision. The petition for writ of certiorari to the Twelfth Circuit Court of Appeals was granted.

Statement of Facts

Respondents, Sarah Kilborn, "Kilborn", Eliza Torrisi, "Torrisi", and Malik Williamson, "Williamson", allege that they have mental health disorders that required inpatient treatment in the past at the State of Franklin Hospitals. R. at 12. Funding is decided by the state legislature. R. at 15. Kilborn and Torrisi were diagnosed with bipolar disorder and Williamson was diagnosed with schizophrenia. R. at 12.

Sarah Kilborn

Kilborn was diagnosed with bipolar disorder in 1997 and was prescribed medication but it did not help the depressive episodes. R. at 12. Kilborn's physician recommended that she receive inpatient treatment at a mental health facility after an episode and she voluntarily admitted herself to Southern Franklin Regional Hospital in Silver City, Franklin 2002. R. at 12. She remained there until 2004 and required inpatient treatment after following episodes. R. at 12. She was re-admitted in 2011. R. at 13. In March 2013, Kilborn's physician determined that she could be transferred to a community mental health facility. R. at 13. Community mental health facility provides mental health services in a setting that allows patients to integrate in communities and offer a variety of mental health services, including

inpatient treatment, outpatient treatment, and daily treatment. R. at 13. Her physician recommended that she use daily services at the community center. R. at 13. However, there was no state-operated community health facility within three and a half hours of Kilborn's home in Silver City, and she could not afford the privately operated community mental health facility in the area. R. at 13. Her physician recommended that she remain institutionalized at Southern Franklin Regional Hospital until she was well enough to be released. R. at 13. Kilborn was released in May 2015. R. at 13. Kilborn voluntarily admitted herself again to Southern Franklin Regional in October 2018. R. at 13. Around 2020, her physician said she could transfer to a community facility, but she was three hours from any community mental health facility. R. at 13. She was released in 2021. R. at 13.

Eliza Torrisi

Torrisi was diagnosed with bipolar disorder in 2016. R. at 14. She took medication and psychotherapy to treat her condition but her bipolar episodes were still severe. R. at 14. Torrisi's parents admitted her to Newberry Memorial Hospital in Golden Lakes, Franklin, in 2019 for inpatient treatment. R. at 14. During inpatient treatment, Torrisi's manic episodes became less frequent and her treating physicians determined in May 2020 that she could be released to a community mental health facility for inpatient treatment. R. at 14. Community mental health facilities offer more socialization options, however, inpatient treatment at a hospital and inpatient treatment at a community mental health facility are the same in that they require patients to remain at the facility for 24 hours a day. There are no state

or privately operated community mental health facilities within four hours of Torrisi's home. R. at 14. The only state-operated community mental health facility in Franklin located in the state capital of Platinum Hills, does not offer inpatient treatment. R. at 14. Instead, Torrisi's physicians recommended she stay at the Newberry hospital until her symptoms could be managed without inpatient care. R. at 14. She was released in May 2021 after several months without manic episodes. R at 14. She was re-admitted in August 2021 when she suffered a manic episode and then released again in January 2022. R. at 14.

Malik Williamson

Williamson was diagnosed with schizophrenia in 1972. R. at 14. Williamson has received inpatient and outpatient treatment at several hospitals in State of Franklin over fifty years due to hallucinations and delusions that have caused him to threaten himself and others. R. at 15. His daughter admitted him to Franklin State University Hospital in Platinum Hills in 2017. R. at 14. His daughter chose this facility because it is a few miles from her home that she shares with Williamson so she could frequently visit. R. at 14. After two years of intensive treatment, Williamson's physician told him that he could be transferred to a community mental health facility for inpatient treatment, but the facility in Platinum Hills does not offer inpatient treatment and the nearest private facility is two hours away. R. at 14. He remained at the hospital because the physician believed nearby support was important. R. at 15. In June 2021, the physician

determined he was well enough to receive outpatient care at the state's community mental health facility, so he left the hospital. R. at 15.

Franklin is one of the largest states in the United States. R. at 15. Platinum Hills is located at center of the state, and it takes several hours to travel from Platinum Hills to towns near neighboring states. R. at 15. There are 692,381 people living in Franklin and 550,000 residents that live more than two hours away from the state's community mental health facility. R. at 15. There were three community mental health facilities until 2011, when Franklin's state legislature cut funding for the Department of Health and Social Services by twenty percent. R. at 15.

Due to this significant financial burden, Defendants were forced to close the facilities located in Mercury and Bronze. The facility in Mercury was closest to Kilborn's and Torrisi's homes (20 minutes and 1 hour respectively). R. at 15-16. Defendants also eliminated the inpatient program at Platinum Hills facility due to the budget cut. R. at 16. The inpatient program was eliminated because it was the most expensive program at Platinum Hills facility to operate and did not have enough people to serve to run the program. R. at 16. The Mercury or Bronze community mental health facilities have not been reopened. R. at 16. Franklin's state legislature increased the Department of Health and Social Services budget by a smaller amount of five percent in 2021. R. at 15. None of Respondents are currently receiving inpatient treatment at Franklin hospitals. R. at 1.

SUMMARY OF THE ARGUMENT

I.

The Respondents improperly brought a claim against the Franklin Department of Social and Health Services because there is no standing to bring a discrimination claim of the risk of institutionalization between the Department and Respondents.

First, the Respondents have not met the elements of standing in this issue as the harm has not occurred yet. Since Respondents are suing for future potential harm, this issue is between the State of Franklin, the state legislature, and Respondents. The lack of funding decided by the state forced the shutdown of these programs, and a favorable decision would not redress the harm because it has not occurred and there is no funding to reopen the proper facilities. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992).

Second, ruling in favor of Respondents would pose an undue financial burden on the Department of Social and Health Services because the Department does not have the funds to make the necessary corrections to open more community centers. Because of this, the Americans with Disabilities Act "ADA", does not require the Department to make modifications. *Koon v. N.C.*, 50 F.4th 398, 406 (4th Cir. 2022).

Finally, the circuit courts rely on the holding in *Olmstead*, where deference is given to the guidance document outlined by the Department of Justice. However, the circuits incorrectly rely on this guidance document because the ADA does not suggest anything for the potential institutionalization of individuals, as outlined by the Fifth Circuit, furthering the idea that there is no standing in this case. Specifically, since there is no ambiguity in the plain language "administer", no deference should be given to the guidance document. *Kisor v. Wilkie*, 588 U.S. 558, 574 (2019). Therefore, this

Honorable Court should reverse the decision of the Twelfth Circuit because they do not meet the elements of standing, the ADA does not require modifications if it imposes a financial burden, and deference should not be given to the guidance document by the Department of Justice outlined in *Olmstead*.

II.

The United States cannot file a lawsuit to enforce Title II of the ADA and thus does not have an interest relating to the subject matter of a private ADA action under Federal Rule of Civil Procedure 24(a)(2) because it has no related interest. Under the four-part test for determining intervention, the United States fails several prongs.

First, the United States's intervention is untimely because of the delay its involvement has in private matters as well as the implication that alternative forms of resolution become nearly impossible. Second, the United States lacks an interest in enforcing Title II since it permits only enforcement by a "person" which the United States is not, nor does it have a valid interest to enforce Title II because its interest is so broad it would imply the ability to intervene in any private matter involving federal law. And third, the United States would not be impaired if this matter is disposed without them since they have other avenues to enact enforcement of Title II. Therefore, the United States should not be permitted to intervene in enforcing Title II claims.

ARGUMENT AND AUTHORITY

Standard of Review. Both issues raise a legal question. A court makes an independent review on conclusions of law de novo and determines their own holding. *First Options of Chicago v. Kaplan*, 514 U.S. 938, 947 (1995).

I. A CLAIM FOR DISCRIMINATION BY RESPONDENTS CANNOT BE BROUGHT UNDER TITLE II OF THE ADA BECAUSE THE CLAIM DOES NOT MEET THE ELEMENTS OF STANDING, THERE IS AN UNDUE FINANCIAL BURDEN, AND OLMSTEAD IS NOT ENTITLED TO DEFERENCE.

Respondents, Sarah Kilborn, Eliza Torrisi, and Malik Williamson must meet the elements of standing to bring the discrimination claim against the Department, but there is no actual injury, this connection lies between Respondents and the state legislature rather than the Department of Social and Health Services, and there's no redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). Moreover, providing reasonable accommodations would pose an undue financial burden on the Department of Social and Health Services, so the ADA does not require that the Department make modifications. *Koon v. N.C.* 50 F.4th 398, 406 (4th Cir. 2021). Lastly, the Circuit Courts rely on the deference to the guidance document in *Olmstead* however, the guidance document is not entitled to deference and the Circuit Courts hinge on an incorrect interpretation of the word, "administer", and ignore Congress's intent with the use of the word, as well as the historic precedent of the plain language meaning rule and Congress's intent. *Olmstead v. L.C. by Zimring*, 527 U.S. 581 (1999).

A. There Is No Standing for the Discrimination Claim Because Respondents Do Not Meet the Elements of Standing Under Article III of the Constitution.

Respondents do not have a claim of discrimination because on its face, they do not meet the standing elements in Article III of the Constitution. The elements of standing under Article III outlined in *Lujan* were that (1) the

plaintiff must have suffered an actual injury; (2) the plaintiff must show a causal link between the harm and the conduct at issue (meaning the injury is traceable to the challenged action and not the result of the independent action of a third party); and (3) it must be probable that a favorable decision would show redress. *Lujan*, 504 U.S. at 560-561.

1. Respondents have not suffered an actual injury because allegations of possible future injury do not satisfy the requirements of Article III.

It is a basic principle that Respondents cannot make a discrimination claim for the potential risk of institutionalization because allegations of possible future injury do not satisfy the requirements of Article III. The Fifth Circuit states, "We have said many times before and reiterate today: Allegations of possible future injury do not satisfy the requirements of Article III. A threatened injury must be certainly impending to constitute injury in fact." *E.T. v. Paxon*, 41 F.4th 709, 716 (5th Cir. 2022). The court continues that even if a petitioner's increased-risk harms are particularized, they must also be actual or imminent. *Id.*

In *E.T.,* the plaintiffs were children with disabilities attending Texas public schools and filed this lawsuit challenging the Act GA-38 in violation of the American Disabilities Act, violation of Section 504 of the Rehabilitation Act of 1973 against all Defendants and federal preemption under the American Rescue Plan Act of 2021 for not requiring face masks or coverings for any person when the plaintiffs all have disabilities with underlying medical conditions, alluding

to a future risk of harm. *Id.* at 713-714. The court in this case established that plaintiffs lack evidence to show this allegation of future injury is certainly pending as a result of GA-38. *Id.* at 716.

While the facts differ from this case, the reasoning is clear, possible future injury does not satisfy the requirements of Article III when challenging an ADA discrimination claim. Respondents are alleging the fear of institutionalization but at present day, none of them are institutionalized and have not been for quite some time. R. at 13-15. The dicta in the Fifth Circuit concretely affirms that it has been said many times and is reiterated again that allegations of possible future harm like a possible institutionalization is not strong enough to satisfy the requirements. *Id.* at 716. The Respondents' fear of being institutionalized in the future is simply not strong enough to satisfy the very first element of standing. R. at 23. It is also important to note that even if the increased-risk harms are particularized, it must be actual or imminent. Here, any alleged increased-risk harms are simply not actual or imminent as Respondents are not currently institutionalized and do not pose a risk of being institutionalized because they have not received treatment for a long period of time. R. at 1.

The Twelfth Circuit Court of Appeals in this case believed there was a current risk of institutionalization, however, the current risk is an actual imminent harm. In each case, there is no actual harm or current risk because Kilborn and Williamson have not been institutionalized since 2021 and Torrisi has not been institutionalized since 2022. R. at 13-15. Therefore, this Court

should reverse the Twelfth Circuit Court of Appeals decision because it fails to meet the first element of standing.

2. Respondents' claim does not satisfy the second element of standing because there is no causal connection between Respondents and the Department of Social and Health Services.

Respondents do not meet the first element of standing, but even if this Court decided that they did, there is no causal connection between the State of Franklin Department of Social and Health Services and the claim Respondents are bringing for discrimination, leaving this as an issue for the state legislature, a third party not before the court. There must be a causal connection between the harm and the conduct, it has to be fairly traceable to the challenged action and not the result of the independent action of some third party not before the court. *Lujan*, 504 U.S. at 560-561.

Lujan applies a standing argument in Article III of the Constitution that a person cannot take the government to court over a general complaint if they haven't been personally hurt in a way that's different from everyone else. *Lujan*, 504 U.S. at 575. In this case, wildlife protection groups sued the Secretary of the Interior because they disliked a rule applying the Endangered Species Act. *Id.* at 557-558. This Honorable Court concluded that plaintiffs did not assert an injury different from anyone else. *Id.* at 555.

Respondents do not meet the elements of standing to take the Department to court over a general complaint because they have not been personally hurt in a way that's different from everyone else. It was a general closure of facilities

due to budget cuts from the state legislature. For example, Platinum Hills had no choice but to shut down their inpatient facility because it was the most expensive to upkeep. R. at 16. Additionally, there is no causal link because the result is the independent action of a third party, the twenty percent budget cut by the state legislature, not the State of Franklin Department of Social and Health Services. R. at 11. Therefore, this Court should reverse the decision of the Twelfth Circuit Court of Appeals because Respondents fail to meet the second element of standing.

3. Redressability is not applicable in this case because a favorable decision towards Respondent would not provide a viable solution.

Not only do Respondents fail to meet element one and two, but more importantly, the Tenth Circuit clearly demonstrates that redress in this case would not be possible for Respondents. A favorable decision will not redress the harm of the plaintiffs if it depends on the actions of independent third parties, such as Congress, which is beyond the court's control. *Citizens for Constitutional Integrity v. U.S.*, 57 F.4th 750, 761 (10th Cir. 2023).

The plaintiffs in *Citizens for Constitutional Integrity and Southwest Advocates, Inc.*, challenged the Cloture Rule, a rule that requires the votes of three-fifths of the Senate to halt debate. *Id.* at 754. The plaintiffs suggested that invalidation of the Cloture Rule could redress its harm because without the Cloture Rule, it might be able to obtain legislation reinstating the Steam Protection Rule and revoking the permit for the expanded Mine. *Id.* at 761. The Tenth Circuit affirmed the District Court decision that the plaintiffs lacked

standing to challenge the Cloture Rule specifically because the possibility that legislation could be obtained to reinstate the Steam Protection Rule by overturning the Cloture Rule is too speculative and is not enough for a favorable ruling. *Id*.

The Tenth Circuit decision directly aligns with the facts in this case where a favorable decision towards Respondents would not show redress because the funding was ultimately slashed by the state legislature by twenty percent leaving a gap in funding for community mental health facilities. R. at 15. It would be too speculative to assume that a favorable decision would show redress that the state legislative would provide adequate funding for the community health centers. The Department of Social and Health Services would not be able to provide a clear plan suggested by the District Court to create more opportunities for future institutionalization, a claim that does not meet the first element of standing of proving an actual and imminent injury. R. at 24. It is clearly shown that the Department of Social and Health Services is not connected to the discrimination claim because the funding to provide the necessary modifications comes from a third party, the state legislature, not a part of this case.

Although the state legislature raised the budget by five percent, the injunctive relief that Respondents are asking for is a significantly insufficient budget to provide centers to each of the Respondents. It's imperative to point out that each Respondent lives in a different location and would require an

impossible redressability. For example, the facility for Williamson would be Platinum Hills but it was too expensive to keep open because there were not enough people and it was the most expensive to upkeep. R. at 16. Mercury is closest to Kilborn and Torrisi but the budget would not be enough to keep another facility running plus Williamson would receive no redress.

Therefore, Respondents do not have a discrimination claim and the Court should reverse the decision of the Twelfth Circuit Court of Appeals because on its face, the claim is not an actual injury, there is no causal connection between Respondents and the Department of Social and Health Services, and redressability is not possible even if the outcome is in Respondents' favor.

B. There Is No Claim for Discrimination Because the ADA Does Not Require Modifications That Impose Financial or Administrative Burdens.

The modifications to provide community centers would impose a financial burden on the Department of Social and Health Services. To avoid repercussions of perpetuating assumptions that persons so isolated are incapable or unworthy of participating in community life, integration must require a state to provide community-based treatment for a disabled persons when (1) the states treatment professionals determine such place 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 similar disabilities. *Olmstead v. L.C. by Zimring*, 527 U.S. 581 (1999). The Fourth Circuit reiterated that the Americans with Disabilities

Act does not require modifications that would impose undue financial *or* administrative burdens. *Koon v. North Carolina* 50 F.4th 398 (4th Cir. 2022). The ADA regulations define "undue burden" to mean a "significant difficulty or expense," taking into account a range of factors relating to the cost of the action compared to the financial resources of the public accommodation. *Tauscher v. Phx. Bd. of Realtors, Inc.*, 931 F.3d 959, 965 (9th Cir. 2019). See 28 C.F.R. § 36.104. See also *Roberts v Kindercare* 86 F.3d 844, 846-47 (8th Cir. 1996).

Rodney Koon was a disabled prisoner who brought a claim under the Americans with Disabilities Act because he was denied a handicap pass. *Koon v. N.C.,* 50 F.4th 398 (4th Cir. 2022). The court decided that Koon failed to show discrimination against Koon denying him a handicap pass. *Id.* at 410. The Nurse Practitioner did not have knowledge of his restrictions or status because the form was incomplete and the Administrator relied on the evaluation of Koon, where the court determined the threshold was not met. *Id.*

While the burden in *Koon* is an administrative burden, it supports the undue burden reasoning here that Respondents do not meet the threshold because it would cause an undue financial burden to the program and there is no requirement to provide modifications if it poses an undue burden. Integration is not required because the placement cannot be reasonably accommodated considering the resources available and needs of others with similar disabilities. *Olmstead v. L.C. by Zimring*, 527 U.S. 581 (1999). Because the budget was slashed twenty percent and only raised by five percent, it is impossible for the

Department of Social and Health Services to open the community centers they were forced to shut down. R. at 15.

There would not be a viable solution that the Department of Social and Health Services can come up with that would benefit Respondents in this case, without harming other individuals benefiting from other programs, especially those with a current actualized harm. This furthers the idea that the Department is simply not responsible, and it cannot be a discrimination claim because providing reasonable accommodation would impose an undue financial burden. *Koon*, 50 F.4th at 406. As defined by the Eighth and Ninth Circuit, this would be an undue burden as the severe cut by the state legislature and small increase would create a deficit of funding and create a "significant difficulty or expense." *Id.* at 15.

By taking the available financial resources into account and the forcible closures of the centers due to a lack of funding, it is apparent that a financial burden was imposed on the Department of Social and Health Services by the state legislature. Therefore, this Court should reverse the Twelfth Circuit Court of Appeals decision because Respondents are not required to make modifications due to the financial burden.

C. *Olmstead* is not entitled to deference because the court cannot interpret language intended by Congress that is not ambiguous.

There is no discrimination claim because the Court cannot interpret language of a public entity "to be prepared to" administer services in the most integrated setting when it is not stated. R. at 34. The dissent in the Twelfth Circuit Court of Appeals in

this case correctly provided a footnote from this Honorable Court stating that, "[t]he Court cannot consider post hoc rationalizations," when attempting to explain the Department of Justice's current thinking on this issue. R at 35. The integration statute states, "[a] public entity shall *administer* services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d). There is nothing in Title II of the ADA suggesting that the potential for institutionalization and segregation in the future constitutes discrimination. 42 U.S.C. §12132.

The Fifth Circuit also identifies this flaw that the ADA does not define discrimination in terms of a prospective risk to qualified disabled individuals. In stating that no individual shall be excluded, denied, or subjected to discrimination, the statute refers to the actual, not hypothetical administration of public programs. *U.S. v. Mississippi* 82 F. 4th 387, 392 (5th Cir. 2023). The Circuit Courts mentioned in this issue rely solely on *Olmstead* and its use of the Department of Justice guidance document when it is not entitled to deference, especially when applied to this case, since the United States fails to explain its reasoning for deference. Moreover, the guidance document states, "[t]his guidance document is not intended to be final agency action [and] has no legally binding effect." *Olmstead v. L.C.*, https://archive.ada.gov/olmstead/q&a_olmstead.htm.

The guidance document does not explain why the United States believes that the ADA, integration mandate, or *Olmstead* extend to those at risk of institutionalization. There are no citations to specific authority or practical justifications for the guidance document other than general reference to the three topics. Additionally, the guidance

document referenced in *Olmstead* is not entitled to deference under the decision made by this Honorable Court in *Auer v. Robbins*, 519 U.S. 452, 453 (1997). It was further limited by this Honorable Court stating an agency's interpretation of its own regulation "can arise only if a regulation is genuinely ambiguous." *Kisor v. Wilkie*, 588 U.S. 558, 574 (2019). The integration mandate is not ambiguous. 28 C.F.R. § 35.130(d).

Kisor furthers the decision in *Auer* to allow courts to defer an agency's reasonable interpretation of its language, if the language is ambiguous. *Kisor v. Wilkie*, 588 U.S. 558, 574 (2019). The word in question was 'relevant' with Kisor seeking retroactive benefits, arguing that the new evidence was 'relevant'. However, the Board of Veterans' Appeals determined the records were not 'relevant' because they did not address the initial reason for the denial of benefits. *Id.* at 589. This Honorable Court vacated the judgment to have the Federal Circuit apply the ambiguity standard to the regulation regarding relevancy. *Id.*

In this case, the integration mandate is not ambiguous. Any interpretation would not apply because *Kisor's* furtherance of the *Auer* decision only allows courts to defer an agency's reasonable interpretation if the language is ambiguous. The integrated mandate clearly uses "administer" that validates that it does not apply to those at risk of being institutionalized, and segregated, in the future. R. at 3.

As mentioned in the dissent, Respondents are asking courts to insert language requiring "to be prepared" to administer services when it has not been interpreted by Congress in this way. R. at 34.

Therefore, the integration mandate is not ambiguous leaving no interpretation for the plain language meaning of "administer" nor does it allow the courts to do the job of Congress to interpret a statute that was intended to be used in the plain meaning.

II. THE UNITED STATES CANNOT FILE A LAWSUIT TO ENFORCE TITLE II OF THE AMERICANS WITH DISABILITIES ACT AND THUS DOES NOT 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).

The Federal Rule of Civil Procedure 24(a)(2) only permits intervention by right if the intervening party "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."

To clear the hurdle set by Federal Rule of Civil Procedure 24(a)(2), the intervenor must show: "(1) its motion to intervene is timely; (2) it has an interest relating to the subject matter of the action; (3) it is situated so that 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). *Also, Walmart Stores, Inc v. Tex. Alcoholic Beverage Comm'n*, 834 F.3d 562, 565 (5th Cir. 2016). This is the same legal test the District Court in the instant case applied. R. at 3.

A. The Standard of Review Should Be *De Novo*.

Although this Court has ruled that an abuse of discretion standard should apply when reviewing the a district court's denial of a motion to intervene by right, *NAACP v. New* York, 413 U.S. 345, 366 (1973), this Court has not yet ruled on a standard of review for issues concerning a district court granting or denying a motion to intervene under Federal Rule of Civil Procedure 24(a)(2) other than for reasons of timeliness.

For issues concerning timeliness, this Court has adopted a *de novo* standard. *See Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S. 267, 279-281(2022). A majority of the circuits—the Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits—have held that a decision about intervention as of right decisions are reviewed *de novo* because "the inquiry under [Rule 24](a)(2) is a flexible one, which focuses on the particular facts and circumstances surrounding each application; that intervention of right must be measured by a practical rather than technical yardstick." *Ceres Gulf v. Cooper*, 957 F.2d 1199, 1202 (5th Cir. 1992) (citing *United States v. Texas E. Transmission Corp.*, 923 F.2d 410, 413 (5th Cir. 1991)) (quotation marks omitted). *Also See, e.g., Grubbs v. Norris*, 870 F.2d 343, 345 (6th Cir. 1989); *Sierra Club v. Robertson*, 960 F.2d 83, 85 (8th Cir. 1992); *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997); *DeJulius v. New Eng. Health Care Emples. Pension Fund*, 429 F.3d 935, 942-943 (10th Cir. 2005); and *Walters v. City of Atlanta*, 803 F.2d 1135, 1151 n.16 (11th Cir. 1986). Under this standard, the Court may independently review without giving deference to the lower court if it

involves the application and scope of a statute. *See Bufkin v. Collins*, 145 S. Ct. 728 (2025).

The Court of Appeals in the instant case held that the standard of review should be the minority standard of abuse of discretion because "this standard of review is appropriate because the district court's decision to grant or deny such a motion is ultimately based on facts that are best determined by the district court." R. at 25. Under this standard, the "district court's decision will be upheld if unless it has applied an improper legal standard or has reached a decision that is clearly incorrect." R. at 26 (citing *Brody v. Spang*, 957 F.2d 1108, 1105 (3d Cir. 1992)).

The District of Columbia applies a mixed approach to issues involving the right to intervene. Under this mixed approach, when the district court's ruling on a motion to intervene as of right is based on a question of law, a *de novo* standard of review is applied, and if the decision is based on questions of fact, an abuse of discretion standard is applied. *Mova Pharm. Corp. v. Shalala*, 140 F.3d 1060, 1074 (D.C. Cir. 1998).

In the instant case, a *de novo* standard of review is more appropriate to properly handle the question presented. The issues discussed *infra* are more rooted in interpretation of Federal Rule of Civil Procedure 24(a)(2) and the Americans with Disabilities Act Title II, 42 U.S.C. § 12101 *et seq*. While some factual issues are present in the instant issue, for this Court to determine whether the district court properly interpreted the controlling law, this Court must make their own

interpretation of the meaning of these laws and then determine whether the district court's decision was proper under this Court's interpretation of the controlling law. While it could be argued that once this Court creates a new interpretation, it could then determine whether there was an abuse of discretion under the new interpretation, the Petitioner urges this Court to follow the *Ceres Gulf* court in recognizing that the relief requested involves a flexible inquiry "which focuses on the particular facts and circumstances surrounding" this case. 957 F.2d at 1202.

Therefore, the Petitioner requests this Court to apply a *de novo* standard of review when considering the instant issue. Or in the alternative, the Petitioner requests this Court to apply the District of Columbia standard of review since this question involves both a mixture of legal interpretation and factual interpretation.

B. The United States's Motion to Intervene Was Not Timely Because It Prejudiced Petitioners.

The test applied by the district court to determine timeliness is based on four factors: "(1) the length of time the intervenor knew of 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, 797-798 (7th Cir. 2013) (citation omitted).

Applying this test to the instant case shows that the United States' intervention was untimely: (1) Even though the motion to intervene was filed in the early stages of litigation (2) the intervention of the United States unduly prejudiced

the Petitioners; (3) the United States would not have been prejudiced if their motion to intervene had been denied; and (4) there are no unusual circumstances that are displayed in favor of timeliness.

When the court in *Grochocinski* applied the second factor of the timeliness test, it determined that Mayer Brown would have been prejudiced because the intervention "would have caused additional delay in resolving this case, which had reached a final judgement." 719 F.3d at 798. Other courts have echoed a similar principle, noting that a motion to intervene is untimely and prejudicial if it causes a postponement in proceedings or resolutions. *E.g. Mastercard Int'l v. Visa Int'l Serv. Ass'n*, 471 F.3d 377, 390-391 (2nd Cir. 2006); *Illinois v. City of Chi.*, 912 F.3d 979, 986-987 (7th Cir. 2019); and *Stupak-Thrall v. Glickman*, 226 F.3d 467, 478 (6th Cir. 2000) (noting that prejudice also involves the "economic realities" of case, such as loss of income).

In the instant case, Petitioner's prejudice does not stem from when the United States filed their motion to intervene. Rather, Petitioner's prejudice stems from the overwhelming presence the United States brings when it decides to intervene in a private lawsuit. Even though the case was in its early stages, the District Court minimized the impact the United States's involvement would have by stating that the Respondents consented and that they assented to a delay in proceedings, and then proceeded to state that regardless of Petitioner's position, they would not be prejudiced since allowing intervention would make the process more efficient. R. at 4. In reality, as Judge Hoffman noted in his dissent, before the United States entered

this case, the original parties had a scheduling order all set to go, with litigation ending in less than a year. Once the United States came in, the order was thrown by the wayside, discovery spiraled out of control costing appellant both time and resources in taking depositions and quashing them (37 depositions and 48 subpoenas costing over $273,000 in additional attorneys' fees) all to have a four-week trial with only 19 witnesses called. R. at 33. This case is what the *Stupak-Thrall* court hypothesized would happen: the District Court permitted intervention knowing case-specific deadlines would not remain intact, resulting in substantial interference "with the orderly process of the [D]istrict [C]ourt." 226 F.3d at 478. Thus, absent the United States's interference in the schedule, its involvement in this case is the exact kind of disregard for the "economic reality" courts have warned against. *Stupak-Thrall*, 226 F.3d at 478. With this intervention, the United States is draining the same coffers whose emptiness had spurred Respondents to file suit. By causing the delay in schedule, Petitioner is hemorrhaging resources that could be spent on community healthcare or remedying the alleged injuries sustained by Respondents should they succeed on their merit claim (although they are unable to do so, see *supra*).

As is argued in more detail *infra*, because the United States lacks an interest in the matter, it would not have been unduly prejudiced had their motion been denied. Therefore, The United States's intervention was untimely because its intervention prejudiced Petitioner through disregard of the existing court schedule and the disregard of Petitioner's economic reality, nor would the United States have been

prejudiced if the motion had been denied since it lacks an interest in the matter (argued *infra*).

C. The United States Is Not a Person Eligible to Bring a Claim and Has No Interest Relating to the Instant Suit.

1. The United States is legally not considered a person.

The statutory provision at issue, Title II, states that "the remedies, procedures and rights set forth in section 505 of the Rehabilitation Act of 1973 shall be the remedies, procedures, and rights this title provides to **any person alleging discrimination on the basis of disability**…" 42 U.S.C. §12133 (emphasis added). Title II does not define what a "person" is but defines a "qualified individual with a disability" as

> an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

42 U.S.C. §12131. "In determining the meaning of any Act of Congress, unless the context indicates otherwise— … the words "person" and "whoever" include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals[.]" 1 U.S.C. §1. Black's Law Dictionary defines "person" as "a human being…" *Person, Black's Law Dictionary* (12th ed. 2024).

"In the absence of an express statutory definition, the court applies a 'longstanding interpretive presumption that "person" does not include the sovereign,' and thus

excludes a federal agency…" *Return Mail, Inc v. USPS*, 587 U.S. 618, 626 (2019) (citing *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765 (2000)). The sister acts of Title II, Title I and Title III, both convey the "powers, remedies, and procedures" to both the Attorney General and qualified persons. 42 U.S.C. §12117(a); and 42 U.S.C. §12188(a). "Congress generally acts intentionally when it uses particular language in one section of a statute but omits it in another," *Dep't of Homeland Sec. v. MacLean,* 574 U.S. 384, 391 (2015).

Under a verbatim interpretation of Title II, the United States has no interest in filing a suit. Title II requires a "person" to file suit. Under common interpretation a "person" (supported by the Black's Law Dictionary, *supra*) is a human individual. Additionally, Title II does not define what it considers a person. *See* 42 U.S.C. §12131. Rather, its closest application of a person is an "individual", which would still exclude the United States. *Id.* In comparing Title II to its sister acts, and applying *MacLean*, it can be strongly inferred that if Congress took time to include the Attorney General in Title I and Title III, but not in Title II, that Congress did not intend for the Attorney General to enforce Title II. *MacLean*, 574 U.S. at 391.

Therefore, because the express definition is absent under Title II and common definition of "person", as well as 1 U.S.C. §1, does not include the presence of the United States, Petitioner urges this Court to apply *stare decisis* with holding that the United States and its agencies is the sovereign and not a person. *Return Mail, Inc.*, 587 U.S. 618 (2019).

2. The United States is not authorized by Title VI of the Civil Rights Act to enforce Title II.

The District Court and the majority opinion of the Twelfth Circuit ignored an essential element of Title II by applying a flawed two-part approach: (1) that the United States was authorized by Title VI of the Civil Rights Act to intervene; and (2) that Congress, by referring to Title VI of the Civil Rights Act, intentionally incorporated its enforcement provisions into Title II. R. at 6, 27-28. Both of these approaches ignore the design of Title II of the Americans with Disabilities Act in comparison with its sister titles, Title I and Title III, and, as argued in more detail *infra*, it opens the door to allow the United States to intervene in any private suit if it involves legislation drafted by any federal agency.

Both Title I and Title III of the Americans with Disabilities Act expressly grant authority to the Unites States to intervene. Title I, in part, conveys "the powers, remedies, and procedures … to the Attorney General, or to any person alleging discrimination … concerning employment." 42 U.S.C. §12117(a). Title III, in part, empowers both the Attorney General or any person to "commence a civil action in any appropriate United States District Court." 42 U.S.C. §12188(b)(1)(B). Comparing this to Title II, the absence of "Attorney General" or a similar provision speaks to its intended absence. *See* 42 U.S.C. §12133.

The lower courts instead reasoned that because the statute Title II indirectly refers to Title IV of the Civil rights Act (42 U.S.C. 2000d *et seq*.) it gained the innate property where the United States may effect compliance "by any other means

authorized by law." 42 U.S.C. §2000d-1. However, by using this reasoning, the lower courts, in permitting the United States to intervene, have contradicted themselves. "[A]uthorized by law" in the context of the instant case is not the law of Title VI of the Civil Rights Act, but rather the law of Title II of the Americans with Disabilities Act. Title II, as argued *supra*, is grounded in the fact that claims must be filed by "a person," thus under the interpretation of Title VI, the United States, not being a person, is not "authorized by law" to intervene. *See* 42 U.S.C. §12133; and 42 U.S.C. §2000d-1.

However, Petitioner does not contend that this would cause a blanket prevention of intervention. Rather, it precludes intervention under Title II, while still permitting action under other enforcement clauses "authorized by law." See *id.* "Boatloads of federal statutes give the United States enforcement powers. The list of possible examples is too long to do justice to the list. But the list doesn't include Title II of the ADA. Nothing in the text of Title II gives the United States power to bring a claim." *Haymarket Dupage, LLC v. Vill. of Itasca*, Case No. 22-cv-160, 2025 U.S. Dist. LEXIS 60493, 11-12 (N.D. Ill. Mar. 31, 2025). Thus, in conjoining Title II, its sister titles, and the titles incorporated into Title II, the United States has other methods of enforcement, but Title II is one of the few avenues that is closed off to it.

The above argument also feeds into the point that Congress had no intent to incorporate the United States into Title II through the incorporated acts. Looking at Title I and III of the ADA, both titles incorporate provisions of the Civil Rights Act, yet expressly include enforcement by the Attorney General. 42 U.S.C. §12117(a); and

42 U.S.C. §12188(a). "Because we 'must presume that a legislature says in a statute what it means and means in a statute what it says[,]'" R. at 6 (quoting *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992)), "Congress generally acts intentionally when it uses particular language in one section of a statute but omits it in another," *MacLean,* 574 U.S. at 391, and "[l]ike substantive federal law itself, private rights of action to enforce federal law must be created by Congress," *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001), the presumption here is that, looking at Title II's sister Titles (which were all enacted at the same time on July 29, 1990), Congress had the opportunity to include the Attorney General as an enforcing party in the enactment of Title II, but chose to omit it. *See* 42 U.S.C. §12133(a); 42 U.S.C. §12117(a); and 42 U.S.C. §12188(a). And even if Congress "stubbed its toe" in drafting Title II, "it's not [the court's] place or prerogative to bandage the resulting wound." *United States v. Sec'y Fla. Agency for Health Care Admin.*, 21 F.4th 730, 756 (11th Cir. 2021) (C.J. Newsom, dissenting) (citing *CRI-Leslie, LLC v. Comm'r of Internal Revenue*, 882 F.3d 1026, 1033 (11th Cir. 2018)).

Therefore, the District Court's application was in clear error when it held that the United States was an eligible "person" to intervene because Congress did not include, or intend to include, the United States as an eligible party to enforce Title II.

3. Disposition of the original suit would not impair the United States because they have no eligible interest in this matter.

Under the (flawed) interpretation of both the District and Circuit Courts, even if the United States would have the authorization to intervene in the present case, it

would lack adequate interests in part for the same reasons mentioned above, as well as that the United States's "institutional interest in ensuring public entities comply with, and are held appropriately accountable for, violating the ADA and its implementing regulations. R. at 7 (citing 42 U.S.C. §12132; 28 C.F.R. §35.130). Petitioner contends that this premise can still be true while barring the United States from filing under Title II since it can still enforce the ADA through other vessels (Title I and Title III), and, as mentioned *supra*, there are many alternative routes the United States can take to effect enforcement of Title II that exist outside of the ADA. See *Haymarket Dupage, LLC* 2025 U.S. Dist. LEXIS at 11-12.

Simply put, while the United States might have the goal to enforce the ADA, the fact that Title II is a closed door does not mean that its interest outweighs the limit Congress set. The United States has other avenues through which it can enforce compliance that are not available to the original Plaintiffs in the matter which would give rise to a standalone claim (*e.g.* under a contractual relationship theory for violating the "conditions of accepting federal monies." See *Sec'y Fla. Agency for Health Care Admin.*, 21 F.4th at 754 (C.J. Newsom dissenting).

4. Even if the United States can file suit under title II due to its interest in enforcing the ADA, permitting it would give it a de facto right to intervene in any case involving statutes drafted by federal agencies.

As mentioned *supra*, both the Circuit Court and District Court opinions noted the United States's broad-spectrum interest to enforce the ADA as a valid tool for intervention. R. at 7, 28. As the dissent in the Circuit Court pointedly noted, from a

policy perspective, while it might make sense to give the United States access to Title II, despite its lack of legal access, for the purposes of enforcing Title II, doing so would risk opening the floodgates by giving the United States access to any and all litigation involving any statute drafted in which the government has some ancillary interest.

The Court in *Haymarket Dupage, LLC* was at a same crossroads, noting that the federal government's interest is too wide-ranging, and thus allowing intervention would give them a right to intervene under any case that involves a federal claim. 2025 U.S. Dist. LEXIS at 13.

> It would be strange to read the word "interest" in Rule 24(a) as an open invitation to the United States to intervene as of right whenever a case raises a federal question. That's an all access pass… A district court "may" permit the federal government to intervene if a party's claim or defense is based on "a statute or executive order administered by the officer or agency." *See* Fed. R. Civ. P. 24(b)(2)(A). That provision wouldn't make much sense if a district court *must* allow the United States to intervene as of right whenever there is a federal question.
>
> *Id.*

Permitting the United States in this case to intervene under this broad-spectrum approach would create a shockwave where the United States would be able to intervene in any form of litigation once a federal statute is involved under the guise that it wants to see it applied properly. Under this theory, the Attorney General's power would begin to encroach on that of the legislative branch since it would turn any private matter between parties, like this case, into a broad application that ignores the legislature's intent. Under this approach, the United States gets to swing around the hammer and require remedies to any potential party without regard to

the individualized circumstances of each party and the defendants. An issue like a Title II claim is a complicated one that involves many factors. If the United States gets to intervene in each and every one of those while asking for broader relief, then the result could risk exposing the broader public to remedies based on the nuances and circumstances of the private matter. The result would be an impossible ideal that is imposed on sectors such as the Franklin Hospitals who are supposed to enact those ideals with realistically constrained resources that ultimately would cause problems on other fronts that the United States can then intervene on again, creating a self-perpetuating cycle. This is not a realistic solution to a real problem. Rather, it would be an idealistic solution in a world that is not equipped to enact it.

CONCLUSION

Respondents did not establish the threshold to bring their discrimination claim against Petitioners for violating Title II of the ADA because they lacked standing, there is an undue financial burden, and the circuit courts rely on *Olmstead*, a case that outlines a document that does not have deference because the plain language meaning of the word administer, is unambiguous. Furthermore, the United States cannot intervene as a party because it has no right to intervene. The United States is not a person eligible to enforce Title II of the ADA, nor does it have Congressional authorization to do so, nor was its motion to intervene timely. Wherefore, Petitioner requests this Honorable Court to reverse the lower court's decision by holding that:

1. A person at risk of institutionalization and segregation in a hospital in the future, but who is not currently institutionalized or segregated, cannot

maintain a claim for discrimination under Title II of the Americans with Disabilities Act.

2. The United States cannot file a lawsuit to enforce Title II of the Americans with Disabilities Act and thus has no interest relating to the subject matter of a private Americans with Disabilities Act action under Federal Rule of Civil Procedure 24(a)(2).

Respectfully submitted,

Attorneys for Petitioner

September 9, 2025