NO. 25-140

IN THE

Supreme Court of the United States

NOVEMBER TERM 2025

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

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 RESPONDENT

TEAM 3415

Attorneys for Respondent

QUESTIONS PRESENTED

I. Whether Title II of the Americans with Disabilities Act ("ADA") encompasses discrimination of individuals at risk of institutionalization and segregation, given this Court's *Olmstead* precedent, the meaning and purpose of Title II of the ADA, and the Department of Justice's interpretation of its own regulation extending relief to individuals at risk of unjustified institutionalization.

II. Whether the United States has a sufficient interest relating to the enforcement of the ADA that is inadequately represented by private litigants and may thus intervene as of right under Federal Rule of Civil Procedure 24(a)(2).

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The unreported opinion of the United States District Court for the District of Franklin in *Sarah Kilborn, Eliza Torrisi, and Malik Williamson v. State of Franklin Department of Social and Health Services*, No. 22-cv-417 (Sept. 12, 2023), is contained in the Record of Appeal at pages 1–24. The District Court GRANTED the United States' motion to intervene under Federal Rule of Civil Procedure 24(a)(2). The Court then GRANTED Appellees' and the United States' motions for summary judgment and DENIED Appellants' motion for summary judgment. Following a four-week bench trial, the court found Franklin in violation of the ADA's integration mandate and ORDERED the State to submit a remedial plan within three months. The Court STAYED its order pending appeal. The unreported opinion of the United States Court of Appeals for the Twelfth Circuit in *Kilborn et. al., v. State of Franklin,* No. 23-1012 (Mar. 4, 2024), is contained in the Record of Appeal at pages 25–42. The Circuit Court AFFIRMED. One judge dissented.

STATUTORY PROVISIONS INVOLVED

The following provisions are relevant to this proceeding: 42 U.S.C. §§ 12101, 12132, 12133; 29 U.S.C. § 794(a)(2); 42 U.S.C. §§ 2000(d); 28 C.F.R. § 35.130, and Federal Rule of Civil Procedure 24(a)(2).

STATEMENT OF THE CASE

I. STATEMENT OF FACTS

This case arises out of the consequences of the State of Franklin's under-resourced community-based mental health services that have placed thousands of residents with disabilities, including the Respondents before this Court, at risk of unnecessary institutionalization. Until 2011, Franklin operated three community mental health facilities that offered daily treatment and residential programs allowing individuals with serious mental illness to remain integrated in society and maintain connections in their homes, workplaces, and communities. Community mental health facilities provide mental health services in a far more integrated environment compared to hospitals and typically provide a variety of services that include inpatient treatment, outpatient treatment, and daily treatment. R. at 13. After the legislature cut the Department of Health and Social Services' ("DHSS") budget by twenty percent in 2011, two of those facilities—Mercury and Bronze—were shuttered. R. at 15. The remaining facility, Platinum Hills, was located much farther from the Respondents' homes and thus far less accessible. *Id.*

Even Platinum Hills did not survive intact. R. at 15-16. Franklin eliminated its inpatient program because it was deemed the most expensive to operate and served the fewest people. R. at 16. Though Franklin's legislature increased DHSS' budget by five percent in 2021, the agency has not reopened the Mercury or Bronze facilities or restored the inpatient program at Platinum Hills. *Id.* The net result is that, in one of the nation's most populous states, there are no state-operated community mental health facilities within two hours of approximately 80% of the state's population. R. at 15.

The consequences of these decisions are illustrated by the experiences of the three Respondents, each of whom live with a serious mental illness and whose physicians have previously recommended community-based treatments as the most integrated setting appropriate to their needs. R. at 12–15. However, Kilborn, Torrisi, and Williamson have all remained in hospital settings beyond the time recommended by their doctor because there was limited availability in community mental health facilities provided by Franklin. The Respondents in this case have a long history of receiving care for their mental health disorders from Franklin and epitomize the discriminatory impacts of Franklin's budget cuts. R. at 12.

Sarah Kilborn has a bipolar disorder diagnosis and a history of repeated hospitalizations at Southern Franklin Regional Hospital. R. at 12-13. As early as 2013, her treating physician recommended transfer to a community mental health facility. R. at 13. But no state-operated facility existed within three and a half hours of her home, and she could not afford the private alternative. *Id.* Kilborn therefore remained institutionalized for more than two years beyond her physician's recommendation. *Id.* In 2018, Kilborn was re-admitted, and faced the same reality two years later when her physician recommended are more integrated level of care that was not available. *Id.* Kilborn remained institutionalized for another year. Since her diagnosis in 1997, Kilborn has remained in institutionalized settings for approximately 4 years longer than her physicians determined. R. at 12-13.

Eliza Torrisi, also diagnosed with bipolar disorder, similarly faced extended institutionalization despite physician recommendations for a more integrated kind of daily treatment in the community. R. at 14. Torrisi remained in an institutionalized

hospital setting for a year longer than was medically necessary because there are no public or privately-operated community mental health facilities within four hours of her home. *Id.* The closure of the Mercury facility—a mere hour from her home—directly contributed to her extended institutionalization because she had no realistic access to a more integrated setting and was accordingly forced back into segregated hospital care. *Id.* At the time this lawsuit was initiated in February 2022, only one month had passed since she had been released from her extended stay. R. at 2, 14.

Malik Williamson has schizophrenia, and a similar history of being denied access to more integrated community treatment services by Franklin. R. at 14–15. Williamson likewise remained hospitalized even after his physician determined he could be treated in the community. *Id.*

For Respondents, the risk of institutionalization is not a far-off possibility. Each of the Respondents in this action had previously been institutionalized for longer than was medically necessary within the year prior to commencing this action. R. at 2, 12–15. All have a history of receiving treatment in institutionalized settings and community-based settings throughout their lives, depending on the changing requirements of managing and treating their mental health conditions. R. at 12–15.

These are not isolated anecdotes. They exemplify the predictable and continuing consequences of Franklin's deliberate budgetary choices to shutter necessary community-based treatment options. By closing two facilities, cutting inpatient programs, and failing to utilize increased appropriations to restore services, Franklin operated a system in which individuals with disabilities are denied community placements and instead consigned to institutions beyond the time that is needed to

address their mental health needs.

II. NATURE OF PROCEEDINGS

The District Court of Franklin. In February 2022, Respondents filed suit in the United States District Court for the District of Franklin alleging that the State of Franklin violated Title II of the ADA by reducing community-based mental services in a manner that was discriminatory by placing them at serious risk of unjustified institutionalization. R. at 2.

Shortly thereafter, the United States moved to intervene pursuant to Federal Rule of Civil Procedure 24(a)(2) ("FRCP"). *Id.* The District Court GRANTED the United States' motion, holding that the Department of Justice possessed an interest in uniform enforcement of Title II that private plaintiffs could not adequately protect. R. at 9. The District Court then bifurcated the case into two phases. R. at 16. First, on cross-motions for summary judgment, the Court considered the legal question of whether individuals at serious risk of institutionalization may bring a claim for discrimination under Title II. *Id.* The District Court GRANTED Respondents' and the United States' motions for summary judgment and DENIED Franklin's motion, holding that risk of unnecessary institutionalization constitutes actionable discrimination under the ADA. R. at 21.

The District Court then conducted a four-week bench trial to determine whether Respondents and similarly situated individuals were in fact at such risk. R. at 24. After hearing nineteen witnesses, including medical experts and state agency officials, the court found that Respondents were at risk of institutionalization and ordered the State to take corrective action. R. at 24–25. Specifically, the District Court required Franklin

to submit a plan to ensure services would be delivered in the most integrated setting appropriate for qualifying individuals with disabilities. *Id.*

The Twelfth Circuit Court of Appeals. Franklin appealed, the District Court STAYED its order pending appeal. R. at 25. Upon review, the United States Court of Appeals for the Twelfth Circuit AFFIRMED the District Court's rulings, agreeing that the United States may intervene as of right FRCP 24(a)(2) and that individuals at risk of institutionalization can bring a discrimination claim under Title II claim. R. at 25–29. One judge dissented. R. at 31. Franklin petitioned for a writ of certiorari. R. at 39. This Court granted review limited to two questions: (1) whether individuals at serious risk of institutionalization may bring a Title II claim; and (2) whether the United States may intervene as of right under Rule 24(a)(2) in a private Title II action. *Id.*

SUMMARY OF THE ARGUMENT

This case tests whether the ADA will retain its strength as a powerful tool to prevent discrimination against individuals with disabilities, or whether it will be hollowed into a remedy that can only be accessed after irreparable harm has occurred. Franklin's decision to limit community-based mental health services to individuals across the state has resulted in extended institutionalizations for Kilborn, Torrisi, and beyond the time that is medically necessary and to continue to live under the constant threat of re-institutionalization. Congress enacted the ADA to establish a nationwide baseline to address discrimination against individuals with disabilities and, ultimately, to eliminate such discrimination. Americans with Disabilities Act of 1990, 42 U.S.C § 12101(b)(1)-(2) (2008). In particular, Congress integrated other federal statutes within the ADA to ensure that public entities are required to administer services in "the most

integrated setting appropriate." General prohibitions against discrimination, 28 C.F.R. § 35.130(d) (2016).

Two questions frame this Court's review. First, whether individuals at serious risk of institutionalization can maintain a claim for discrimination under Title II when they are at risk of institutionalization. Second, whether the United States may intervene as of right under FRCP 24(a)(2) to protect its Congressionally delegated role in uniform enforcement of Title II. Each question has important implications for the meaning and impact of the ADA on thousands of individuals living with disabilities in Franklin and across the United States.

I.

First, individuals at serious risk of institutionalization may bring a Title II claim. This Court in *Olmstead v. L.C. ex rel. Zimring* recognized that unjustified institutional isolation is itself discrimination and that States must not discriminate among individuals with disabilities in the provision of their state programs. *See generally,* 527 U.S. 581, 597 (1999). Several Circuit Courts held that *Olmstead* and Title II protections against unjustified institutionalization applied to individuals who were not presently institutionalized. *See Radaszewski ex rel. Radaszewski v. Maram*, 383 F.3d 599, 600 (7th Cir. 2004); *Fisher v. Oklahoma Health Care Authority,* 335 F.3d 1175, 1177–78 (10th Cir. 2003). In 2009, the DOJ formally codified these legal developments in a guidance document operating as the agency's interpretation of its integration mandate regulation. U.S. Dept' of Justice, Statement of the Department of Justice on the Integration Mandate of Title II and *Olmstead v. L.C.,*

https://archive.ada.gov/q&a_olmstead.htm ("Statement"). In keeping with the wisdom of numerous Circuit Courts that have held that individuals at risk of institutionalization can maintain a claim for discrimination under Title II on these grounds, the DOJ's interpretation of its own agency regulation is also entitled to deference under the *Kisor* test. *See Kisor v. Wilkie,* 588 U.S. 558 (2019). Further, the principles identified by Congress in passing the ADA, and this Court in its *Olmstead* holding, would be hollow if plaintiffs had to endure confinement before calling upon their statutory protections. Recognizing "at-risk" claims honors the statute's text and purpose, and the deference afforded to agencies when they interpret their own regulations in a manner that satisfies the *Kisor* test.

II.

Second, the United States properly intervened as of right in this action. Title II expressly incorporates the enforcement provisions of § 505 of the Rehabilitation Act, which in turn incorporates Title VI of the Civil Rights Act. 42 U.S.C. § 12133; 29 U.S.C. § 794a. Title VI has always authorized federal enforcement, and as this Court explained in *Cannon v. University of Chicago,* when Congress incorporates enforcement provisions from an earlier statute, it does so with awareness of "the remedies available" under those provisions. *Cannon v. Univ. of Chi.*, 441 U.S. 677, 696 (1979). Courts have repeatedly confirmed that this includes DOJ's authority to enforce Title II. *See, e.g., United States v. Florida*, 938 F.3d 1221, 1248 (11th Cir. 2019). Congress enacted the ADA against the backdrop of legislative findings that existing laws were "inadequate to combat the pervasive problems of discrimination" individuals with disabilities faced. S. Rep. No. 101-116, at 18 (1989); H.R. Rep. No. 101-485(II), at 47 (1990). Excluding

DOJ would fracture national ADA enforcement and leave the rights of individuals with disabilities subject to geographical and resource disparities. FRCP 24(a)(2) exists to protect the rights of non-parties whose interests could be harmed by the outcome of litigation when their interests are inadequately represented by the parties. Excluding DOJ from intervening in this litigation would strike at the core of the function of Rule 24(a)(2) and profoundly impair the enforcement role that Congress delegated to the DOJ.

Together, the rulings by the District Court of Franklin and the Twelfth Circuit preserve the ADA's integrity as a preventative and systemic tool instrumental in the elimination of discrimination against individuals with disabilities by holding that individuals need not wait until they are segregated to seek protection (preventative), and DOJ's participation ensures national uniformity rather than fragmented enforcement (systematic). Their judgments should be affirmed.

ARGUMENT

Standard of Review. This appeal raises two issues: one procedural and one legal. The first issue, whether individuals can maintain a claim for relief under the ADA when they are not institutionalized, is a question of law. Accordingly, for this issue, de novo review is the appropriate standard of review. *Brown v. Plata*, 563 U.S. 493, 512 (2011) (*citing Anderson v. Bessmer City*, 470 U.S. 564, 573–74 (1985)).

For the procedural issue, the standard of review is less clear. This Court has not resolved the precise standard of review that applies when a district court grants intervention under FRCP 24(a)(2). This Court has held that when a motion to intervene

is denied because it is untimely, the appropriate standard is abuse of discretion on appeal. *NAACP v. New York*, 413 U.S. 345, 366 (1973). Nonetheless, this Court has not addressed whether the same standard governs when intervention is granted as opposed to denied.

The Circuit Courts are divided. Several Circuits apply an abuse of discretion standard, while the Sixth Circuit contends that the sufficiency of the criteria in Rule 24(a)(2) presents a legal question wherein the *de novo* standard is appropriate. *Compare Int'l Paper Co. v. Town of Jay, Me.,* 887 F.2d 338 (344) (1st Cir. 1989), *and Am. Lung Ass'n v. Reilly*, 962 F.2d 258, 261 (2d Cir. 1992), *with Stupak-Thrall v. Glickman,* 226 F.3d 467, 471 (6th Cir. 2000). Since the outcome of this issue does not turn on the standard of review, for the sake of simplicity, both arguments below proceed under a *de novo* standard of review.

I. INDIVIDUALS WHO ARE AT RISK OF INSTITUTIONALIZATION, BUT WHO ARE NOT CURRENTLY INSTITUTIONALIZED, CAN MAINTAIN A CLAIM FOR DISCRIMINATION UNDER TITLE II OF THE ADA.

This Court should affirm the Circuit Court's holding that individuals need not wait until they have been institutionalized to bring a claim under Title II of the ADA. There are two avenues for this Court to affirm the Circuit Court's decision: first, at-risk plaintiffs are included in within the *Olmstead* holding and Circuit Courts have upheld decisions to that effect, and second, the DOJ's interpretation of its integration mandate regulation extending the regulation to at-risk individuals is entitled to *Auer* deference under the *Kisor* test.

A. Individuals at risk of institutionalization are encompassed within this Court's interpretation of the ADA and its regulations in *Olmstead.*

In 1990, Congress passed the ADA to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." *Olmstead,* 527 U.S. at 589 (*citing* § 12101(b)(1)). Congress specifically identified unjustified segregation and institutionalization of individuals with disabilities as a "for[m] of discrimination." *See* § 12101(a)(2) ("historically, 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"); § 12101(a)(5) ("individuals with disabilities continually encounter various forms of discrimination, including . . . segregation"). Under Title II of the ADA, Congress explicitly set forth prohibitions against such discrimination in public services, writing 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.

To implement Title II, Congress directed the Attorney General to issue regulations consistent with the provisions in the ADA and requirements of recipients of federal funds under §504 of the Rehabilitation Act. §12134(a), (b). The Attorney General issued regulations in accordance with these instructions by creating the "integration mandate" and requiring public entities to "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) (emphasis added). This regulation

describes "the most integrated setting" as "a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible." 28 C.F.R. Sub. B, §35.130 (2024). Notably, the Attorney General included a key limitation in the regulation by requiring only that public entities make "reasonable modifications" to avoid "discrimination on the basis of disability," but not requiring measures that would "fundamentally alter" the nature of the public entity's programs. 28 C.F.R. § 35.130(b)(7).

1. This Court's Olmstead *holding requires public entities to administer services in a non-discriminatory way.*

The integration mandate was interpreted by this Court in 1999 when two plaintiffs challenged their institutionalization in state-operated hospitals in Georgia. *See generally, Olmstead,* 527 U.S. at 588. There, this Court considered whether the State's failure to transfer the two plaintiffs to more integrated state-run community care facilities after their physicians determined that their transfer was appropriate constituted a violation of the ADA and the integration mandate. *Id.* This Court determined that "unjustified isolation . . . is properly regarded as discrimination based on disability" that constitutes a violation of the integration mandate when certain criteria are met. *Id.* at 597. Following the *Olmstead* ruling, it was clear that public entities are required to provide more integrated community-based services to individuals with disabilities when 1) the State's treatment professionals have determined that the more integrated setting is appropriate, 2) the affected persons do not oppose such treatment, and 3) the treatment can be "reasonably accommodated, taking into account the resources available to the State and the needs of others who are receiving disability services from the State." *Id.* at 587.

In describing the third element of the *Olmstead* test, the Court was careful to emphasize the discretion afforded to States to manage and implement programs and services to care for individuals with disabilities. *Id.* at 603 (rejecting the Circuit Court's construction of the reasonable-modifications standard that "would leave the State virtually defenseless once it is shown that the plaintiff is qualified for the service or program she seeks"); *Id.* at 603 (Kennedy, J., concurring in judgment) (noting the "special obligation" of States to care for individuals who are mentally disabled). Importantly, this Court stated "[w]e do not . . . hold that the ADA imposes on the States a 'standard of care' for whatever medical services they render or that the ADA requires States 'to provide a certain level of benefits to individuals with disabilities.'" *Id.* at 603 n.14 (quoting *Id.* at 2198 (Thomas, J., dissenting)). Rather, the Court held that "States must adhere to the ADA's nondiscrimination requirement with regard to the services they in fact provide." *Id.* In conjunction with this Court's rejection of the requirement of identifying a "comparison class" for individuals to maintain a claim for discrimination, *Olmstead* can be properly read to require States to ensure that the public services they provide to individuals with disabilities do not discriminate against, or among, them. *Id.* at 598 ("We are satisfied that Congress had a more comprehensive view of the concept of discrimination advanced in the ADA.").

While the plaintiffs in *Olmstead* were institutionalized when they brought their action, the *Olmstead* test did not hinge on whether an individual had already experienced institutionalization. Rather, the emphasis was on whether the State had discriminated against them in its provision of programs and services for individuals with mental disabilities. *See Olmstead,* 527 U.S. at 603 n.14, 607. Thus, under this

reading, individuals who are not institutionalized can maintain a discrimination claim under this Court's interpretation of the ADA's requirements by alleging that the provision of the State's programs discriminates against them – for example, by putting them at risk of unjustified institutionalization in the future.

2. Circuit Courts applied **Olmstead** *to individuals at risk of institutionalization, even before the DOJ came to the same conclusion in its guidance document.*

In 2002, an individual in Illinois did just that by arguing that the State's failure to pay for their in-home care while they *remained* in the home-care setting amounted to discrimination based on disability in violation of Title II and the integration mandate. *Radaszewski*, 383 F.3d at 600. Initially, the District Court entered a judgment on the pleadings in favor of the State. *Id.* However, the Seventh Circuit reversed and held that the District Court's judgment was improper because the plaintiff had plead sufficient allegations under the *Olmstead* test to permit the inference that the home placement was medically appropriate, the plaintiff did not oppose such placement, and that such a placement could be reasonably accommodated by the State. *Id.* at 614–15. The Circuit Court also held that the pleadings did not support a finding that the relief Radaszewski sought was unreasonable or would require a fundamental alteration of the State's programs. *Id.* at 615.

Thus, the Seventh Circuit interpreted *Olmstead* to extend beyond individuals currently experiencing segregation by allowing a plaintiff to proceed who was not currently institutionalized and was receiving care in a more integrated setting. *Id.* In other words, the Circuit Court did not hold that, as a matter of law, the plaintiff had to be institutionalized before they could bring a claim under Title II and the integration

mandate.

Individuals with disabilities brought a similar case in *Fisher v. Oklahoma Health Care Authority*, alleging that the State's decision to limit the number of prescriptions covered by their state-run medical program discriminated against them by placing them at risk of unjustified institutionalization in violation of the integration mandate. 335 F.3d 1175, 1177–78 (10th Cir. 2003). Again, the plaintiffs' case did not initially succeed because the District Court granted summary judgment in favor of the State by concluding that the plaintiffs "could not maintain a claim under the ADA because they are not presently institutionalized and face no risk of institutionalization." *Id.* at 1180.

However, the 10th Circuit rejected the District Court's reading of the ADA and the integration mandate, holding that the protections in the ADA "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." *Id.* at 1181. Further, the Court emphasized that neither the plain language of the ADA and its regulations, nor the *Olmstead* decision, supported a conclusion that the protections provided by the integration mandate are limited to individuals who are already institutionalized. *Id.* *Fisher* represents another instance of a Circuit Court correcting a District Court's interpretation of the *Olmstead* holding that limited relief to individuals who were already institutionalized.

Following the budget cuts in 2011, Franklin no longer operates *any* community mental health facilities that offer inpatient treatment. While the Respondents in this

case are not currently institutionalized, they bring allegations to similar to the plaintiffs in *Radaszewki* and *Fisher* by contending that the State has provisioned its services for individuals with disabilities in a way that discriminates against them by failing to make more integrated options available should those options become medically necessary. Respondents in this case have no community-based alternative to receiving necessary care when such care is required, just like the plaintiff in *Radaszewski* (who had no alternative in the face of the State's refusal to fund his at-home care) and the plaintiffs in *Fisher* (whose current prescriptions would only be covered by the state's program in more institutionalized settings that were not medically appropriate). Institutionalization is not a precursor for being able to establish that a state's allocation of resources is discriminatory. The Seventh and Tenth Courts were right to find an *Olmstead* claim under these circumstances.

Following the direction of the Seventh and Tenth Circuit Courts, and the DOJ's interpretation of its integration mandate explicitly extending *Olmstead* to individuals at risk of institutionalization, at least five other Circuit Courts have agreed that individuals can raise a discrimination claim under Title II of the ADA *before* being unjustly institutionalized. *See generally, Davis v. Shah*, 821 F.3d 231 (2d Cir. 2016); *Pashby v. Delia*, 709 F.3d 307 (4th Cir. 2013); *Waskul v. Washtenaw Cnty. Cmty. Mental Health,* 979 F.3d 426 (6th Cir. 2020); *M.R. v. Dreyfus,* 697 F.3d 706 (9th Cir. 2012); *State of Franklin Dep't of Social and Health Servs. v. Kilborn,* 22 F.5d 22 (12th Cir. 2024). The growing agreement among several Circuit Courts that individuals at risk can maintain a claim reflects compelling statutory interpretation and policy reasons why individuals at risk should be able access relief under the integration mandate, among

them that "individuals who have experienced discrimination on the basis of disability have often had no legal recourse" and "[i]nstitutionalization sometimes proves irreversible." 42 U.S.C. § 12101 (a)(4); *M.R.,* 697 F.3d at 735. Further, District Courts in the years since this Court's *Olmstead* decision have demonstrated the feasibility of managing claims brought by at-risk individuals and the ability of judicial factfinders to determine whether an individual is sufficiently "at risk" of institutionalization to fall within the scope of the integration mandate. *See, for example, Guggenberger v. Minnesota*, 198 F.Supp.3d 973 (D.Minn. 2016); *Brantly v. Maxwell-Jolly*, 656 F.Supp.2d 1161 (N.D. Cal. 2009); *Isaac A. v. Carlson*, 775 F.Supp.3d 1296, 1347 (N.D. Ga. 2025).

3. The Fifth Circuit's narrow interpretation of the ADA is not compatible with the statute's purpose.

In contrast to the Seven Circuit Courts in agreement, the Fifth Circuit in *United States v. Mississippi* and the dissenting justice in the Twelfth Circuit insist that at-risk plaintiffs are unable to recover because of their literal interpretation of the ADA and its regulations. *United States v. Mississippi*, 82 F.4th 387, 392 (5th Cir. 2023) ("[T]he ADA does not define discrimination in terms of a prospective risk to qualified disabled individuals"); *State of Franklin,* 22 F.5d 22, 35 (12th Cir. 2024) (Hoffman, C.J., dissenting) ("There is nothing in Title II of the ADA suggesting that the potential for institutionalization and segregation in the future constitutes discrimination."). This interpretation hinges on the statutory text being in the past tense, wherein the ADA states that no individual shall be "excluded," "denied," or "subjected to discrimination." 42 U.S.C. § 12132. Because the words are in the past tense, the 5th Circuit concluded, "the statue refers to the actual, not hypothetical administration of public programs." *Mississippi,* 82 F.4th at 392. This interpretation oversimplifies the complexity of

language and ignores Congress' clear intent to reduce the discriminatory phenomenon of unjustified institutionalization.

Taking the discrimination provision as a whole in view, the ADA's language is logically read to encompass individuals with disabilities *before* experiencing discrimination. The statutory language states that "no qualified individual with a disability *shall* . . . *be* excluded . . . or *be* denied . . . or *be* subjected to discrimination." 42 U.S.C. § 12132 (emphasis added). In this context, the phrase "shall be" operates as a modal verb meaning "certainly will." *Cambridge Academic Content Dictionary* (2025). Under this textualist interpretation, the statute encompasses the experiences of people who have not yet experienced discrimination, but for one reason or another, believe they "certainly will" be excluded, denied, or subjected to discrimination by some actor in the future. Under this reading, the experiences of the Respondents fit would within the meaning of the statute.

Even conceding that the meaning of the statute is ambiguous, Congress' purpose and intent confirms a proper interpretation of Title II that includes the experiences of the Respondents. This interpretation is consistent with the statute's purpose to eliminate discrimination. *See* 42 U.S.C. § 12101(b)(1). Congress' purpose to eliminate discrimination is naturally realized by including those who have not yet been discriminated against in its scope. In the context of institutionalization, if the statute required that an individual be segregated prior to accessing relief, the statute could be seen to *encourage* institutionalization as a legal prerequisite. *See Makin v. Hawai'i*, 1114 F.Supp.2d 1017, 1033 (D. Haw. 1999) (rejecting a statutory interpretation requiring institutionalization as "misplaced" and would create a reality in which "the

only alternative for Plaintiffs . . . is institutionalization"). Such a legal prerequisite would have the opposite effect of Congress' purpose of eliminating unjustified institutionalization and cannot be a colorable interpretation.

B. The DOJ's interpretation of its own integration mandate regulation is entitled to *Auer* deference under the *Kisor* standard.

A decade after the *Olmstead* decision, the DOJ issued a technical guidance document stating that "[i]ndividuals need not wait until the harm of institutionalization or segregation occurs or is imminent" to bring a claim for violation of the integration mandate." U.S. Dep't of Justice, Statement. Rather, individuals can bring a claim after establishing they are at risk of institutionalization "if a public entity's failure to provide community services or its cut to such services will likely cause a decline in health, safety, or welfare that would lead to the individual's eventual placement in an institution." *Id.*

An agency's interpretation of its own regulation is warranted more than the level of "respect" recognized by this Court in *Olmstead*. 527 U.S. at 582–83. Courts are instructed to defer to an agency's interpretation of its own regulation unless that interpretation is "plainly erroneous or inconsistent with the regulation." *See generally Auer v. Robbins*, 519 U.S. 452, 461 (1997). This Court narrowed the scope of *Auer* deference in *Kisor v. Wilkie*, requiring an agency's interpretation to meet five criteria to be given deference: 1) the regulation is genuinely ambiguous, even after employing all the traditional tools of statutory interpretation, 2) the agency's interpretation is reasonable, 3) the interpretation adequately reflects the agency's views as an "authoritative" rather than "ad hoc" position, 4) the interpretation implicates the

agency's "substantive expertise," and 5) the interpretation must reflect the agency's "fair and considered" judgment. 588 U.S. 558, 574–80 (2019).

Here, *Auer* deference applies because the integration mandate regulation is ambiguous. There are two possible interpretations: that public entities are required to administer programs, services, and activities regardless of whether a specific person is institutionalized or that public entities are only required to do so once an individual has been institutionalized. *See* 28. C.F.R. § 35.130(d); *Kilborn v. State of Franklin Dep't of Social and Health Servs.*, 38 F.5th 281, 20 (D. Franklin 2022). The DOJ has chosen one of these two possible interpretations, and therefore, their interpretation is consistent with the regulation and not plainly erroneous. *Auer* deference is appropriate; but the *Kisor* test must still be met. Since the DOJ's guidance document satisfies the *Kisor* test (as analyzed below), deference is warranted for the DOJ's interpretation that the scope of its own regulation reaches individuals at risk of institutionalization, such as Kilborn, Torrisi, and Williamson.

1. Kisor *deference is warranted because the DOJ's guidance document is genuinely ambiguous.*

The first element in the Kisor test is that the regulation is "genuinely ambiguous." *Kisor*, 588 U.S. at 573. This first step is the most burdensome and requires employing the traditional tools of statutory analysis by looking to the text, structure, history, and purpose of a regulation. *Id.* The interpretation of the DOJ's guidance document is different than the earlier analysis of the ADA's statutory text. The plain meaning of the regulation does not offer direction because it is silent on whether a plaintiff must be currently institutionalized for the regulation to take effect. *See* 28. C.F.R. § 35.130 (d) ("A public entity shall administer services, programs, and activities

in the most integrated setting appropriate to the needs of qualified individuals with disabilities."). Further, while the regulation directs public entities to make "reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability," it does not define what an individual must experience or be about to experience for such modifications to be necessary. 28 C.F.R. §35.130 (b)(7)(i).

The structure, history, and purpose of the regulation offer little insight to the mix. In terms of structure, the regulation gives contradictory direction in a separate part of the regulation focused on accessibility. *See* §35.150(a)(1) ("A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety is readily accessible to and usable by individuals with disabilities. This paragraph does not . . . 1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities"). The regulation thus maintains that public entities must take some actions to anticipate (and prevent) future interactions with their services that would have a discriminatory effect, without defining how far those actions must reach to prevent such future harm.

In terms of regulatory history and purpose, the DOJ did not consider or otherwise alter the scope of the integration mandate throughout the rulemaking process. *See generally,* Nondiscrimination on the Basis of Disability in State and Local Government Services, 56 Fed. Reg. 35694, 35702–706 (July 26, 1991). However, the DOJ identified the purpose of the regulations in §35.130 as "intended to prohibit exclusion and segregation of individuals with disabilities." *Id.* at 35703. A regulation that required individuals with disabilities to experience segregation before they could

seek relief is in direct contradiction with its intent to prohibit such segregation. Despite this apparent contradiction in purpose, the DOJ declined to comment on the scope of the integration mandate. Thus, after employing the traditional tools of statutory interpretation to determine the meaning of the regulation, the integration mandate remains genuinely ambiguous and the first element of the *Kisor* test is satisfied.

2. The DOJ's interpretation of the integration mandate is reasonable.

To satisfy the second element of the *Kisor* test, the agency's interpretation must be "within the bounds of reasonable interpretation." *Kisor,* 588 U.S. at 76 (quoting *Arlington v. FCC*, 569 U.S. 290, 296 (2013)). The Court described a reasonable interpretation as one that is "within the zone of ambiguity the court has identified after employing all its interpretative tools." *Id.* Here, DOJ's interpretation of the integration mandate articulated in the DOJ's Statement is reasonable because it falls within the two possible ambiguous meanings. Thus, because the DOJ's interpretation of the integration mandate that extends relief to individuals at risk of institutionalization is reasonable, the second element of the *Kisor* test is satisfied.

3. The DOJ's interpretation of the integration mandate reflects its authoritative position.

Next, the DOJ's interpretation reflects its authoritative, rather than "ad hoc," position. *Kisor,* 588 U.S. at 577. The DOJ created its guidance document to function as a "technical assistance guide to assist individuals in understanding their rights and public entities in understanding their obligations under the ADA and Olmstead." U.S. Dept' of Justice, Statement. While the DOJ's interpretation "is not intended to be a final agency action" and "has no legally binding effect," those are not requirements for the

agency's position to be an authoritative one. *Id.* Rather, the interpretation must be "understood to make authoritative policy in the relevant context." *Kisor,* 588 U.S. at 577. Here, the DOJ recognizes that the guide "explains the positions the [agency] has taken in its Olmstead enforcement" and "reflects the views of the [agency]." U.S. Dep't of Justice, Statement. Thus, the DOJ's guidance document reflects an authoritative position, thereby satisfying the third element of the *Kisor* test.

4. The DOJ's interpretation implicates the agency's substantive expertise and is fair and reasoned.

Lastly, the DOJ's interpretation of the integration mandate satisfies the final two criteria for *Kisor* deference because the agency's position implicates its substantive expertise and is fair and reasoned. This Court recognized that an agency's position implicates its substantive expertise is "most obvious when a rule is technical." *Kisor,* 588 U.S. at 578. Here, the rule is technical, and the DOJ has recognized its technicality by referencing its position as a "technical assistance guide." U.S. Dept' of Justice, Statement. Furthermore, as the primary enforcer of Title II, the DOJ's substantive expertise is implicated in an agency interpretation regarding the scope of the regulation's application.

Finally, DOJ's interpretation is fair and reasoned. It is not the kind of agency interpretation this Court warned of as a "a merely convenient litigating position" or "post hoc rationalization advanced to defend past agency action against attack." *Kisor,* 588 U.S. at 559 (citing *Christopher v. SmithKline Beecham Corp*., 567 U.S. 142, 155 (2012)) (quotations omitted). Here, the DOJ's interpretation is so much more: it has been in place for nearly 15 years and contains thoughtful question and answer sections about the implications of its interpretation. *See* U.S. Dept' of Justice, Statement. Thus,

the DOJ's interpretation of its own integration mandate regulation that extends this Court's holding in *Olmstead* to individuals at risk of institutionalization is entitled to *Kisor* deference. On these grounds, we respectfully ask this Court to affirm the judgment of the Twelfth Circuit holding that individuals at risk of institutionalization can raise a discrimination claim under Title II of the ADA.

II. THE UNITED STATES MAY INTERVENE UNDER RULE 24(A)(2) BECAUSE IT POSSESSES A KEY INTEREST IN UNIFORM ENFORCEMENT OF TITLE II THAT PRIVATE PLAINTIFFS CANNOT ADEQUATELY PROTECT.

Franklin's position would deny the DOJ the enforcement role that Congress deliberately vested in it under Title II. Its request ignores both the text of Rule 24(a)(2) and Congress's deliberate design. The DOJ is no ordinary litigant: it is the statutory enforcer of Title II's integration mandate, entrusted to ensure uniform application nationwide. The United States satisfies the criteria established in Rule 24(a)(2) and must be permitted to intervene, especially in light of Congress' clear delegation of enforcement authority.

A. The DOJ has a sufficient interest in actions brought under Title II to intervene as of right.

Rule 24(a)(2) sets out four requirements for intervention of right: (1) a timely motion; (2) a significantly protectable interest relating to the subject of the action; (3) a risk that disposition in the applicant's absence may impair or impede its ability to protect that interest; and (4) inadequate representation by existing parties. Fed. R. Civ. P. 24(a)(2). The timeliness of the United States' motion is undisputed, and the impairment prong is clearly met. *See Kilborn v. State of Franklin Dep't of Social and Health Servs.,* 38 F.5th 281, 283 (D. Franklin 2022). Thus, the analysis here turns on

the second and fourth prongs: whether the DOJ possesses a direct and protectable interest, and whether private plaintiffs can adequately represent that sovereign interest. The United States satisfies both.

1. Congress' statutory cross-references in Title II indicate the importance of DOJ's role as enforcer and evidences its direct and protectable interest in this dispute.

Congress deliberately tied Title II's enforcement to the Rehabilitation Act's § 505, which itself incorporates Title VI of the Civil Rights Act. Title II states that "[t]he remedies, procedures, and rights set forth in § 794a of Title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title." 42 U.S.C. § 12133. Section 505 of the Rehabilitation Act, in turn, states that "[t]he remedies, procedures, and rights set forth in Title VI of the Civil Rights Act of 1964 … shall be available to any person aggrieved … under section 794 of this title." 29 U.S.C. § 794a(a)(2). Title VI directs federal enforcement. 42 U.S.C. §§ 2000d-1, -2. By incorporating § 505 of the Rehabilitation Act (which itself incorporates Title VI) Congress carried forward the entire remedial scheme already recognized under Title VI. That cross-reference was a deliberate borrowing of enforcement in full, ensuring DOJ's authority to effectuate systemic rights under the ADA. *See Cannon v. Univ. of Chicago*, 441 U.S. at 696.

2. Federal courts consistently recognize the DOJ's essential enforcement authority under Title II.

Both the statutory text and judicial precedent confirm that Congress designed Title II to empower the DOJ to act as its enforcer. The Eleventh Circuit in *United States v. Florida* rejected Florida's narrow reading, holding that "the United States has full authority to enforce Title II's integration mandate" and that stripping that authority

would "gut" federal enforcement of systemic ADA violations. 938 F.3d 1221, 1248 (11th Cir. 2019). That conclusion follows directly from the statutory chain of incorporation. Title II provides that "the remedies, procedures, and rights set forth in section 794a of title 29 shall be the remedies, procedures, and rights" for claims under § 12132. 42 U.S.C. § 12133. Section 505 of the Rehabilitation Act, in turn, makes available "the remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964." 29 U.S.C. § 794(a)(2). Title VI authorizes compliance "by any other means authorized by law," a phrase that has been long implemented through regulations, which include referral to the DOJ. 42 U.S.C. § 2000(d).

This Court has long made clear that when Congress incorporates the enforcement provisions of one statute into another, it does so deliberately and in full. *See generally Cannon v. Univ. of Chi.*, 441 U.S. 677, 696 (1979). That is exactly what Congress did here, since Title II directs claims through § 505 of the Rehabilitation Act and § 505 in turn incorporates Title VI. In *Cannon*, this Court explained that when Congress incorporates enforcement provisions from another statute, it does so with awareness of "the remedies available" under those provisions. *Id.* That principle leaves no room to read Title II as if Congress silently stripped the federal sovereign of enforcement power it had affirmatively relied upon in the Rehabilitation Act and Title VI.

This Court's approach to statutory interpretation confirms the point. As this Court has held, "we must presume that a legislature says in a statute what it means and means in a statute what it says." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992). Congress could have drafted Title II to authorize only private enforcement.

Instead, it chose the broader Title VI model that has always included federal enforcement alongside private suits. Reading Title II to exclude the DOJ would undo that deliberate choice and render meaningless statutory language designed to protect systemic rights.

Franklin is likely to argue, as did the dissent in the Twelfth Circuit, that the DOJ cannot invoke these provisions because it is not a "person" under Title II. *See State of Franklin Dep't of Social and Health Servs.,* 22 F.5d 22, 31–32 (12th Cir. 2024) (Hoffman, C.J., dissenting). This view is mistaken. When Title II is taken in context (including the statutory cross-referencing and integration), Congress' clear intent for the Attorney General to be able to afford themselves of the remedies, procedures, and rights available in the ADA to enforce the ADA emerges. With this context in mind, Congress' use of "person" in Title II includes the Attorney General. Thus, a narrow interpretation of the use of the word "person" that fails to recognize Congress' statutory scheme would contradict Congress's design and the way this Court has consistently understood statutory cross-references to operate. *See Disability Advocates, Inc. v. Paterson*, 653 F. Supp. 2d 184, 190–91 (E.D.N.Y. 2009).

Other courts have recognized the same. In *Disability Advocates*, the Eastern District of New York granted DOJ's intervention in a statewide ADA challenge, reasoning that the federal government had a distinct enforcement interest beyond that of private plaintiffs. 653 F. Supp. 2d 184, 190–91 (E.D.N.Y. 2009). It reflects the consistent understanding that DOJ is not a bystander in ADA enforcement but the institutional guarantor of uniform compliance. Read together, these provisions show that Congress gave the DOJ a direct role in enforcing Title II. That authority is not

incidental; rather, it is a direct and protectable interest in this dispute. The DOJ thus satisfies the first disputed prong of the Rule 24(a)(2) test.

A. Private plaintiffs cannot adequately represent the sovereign interest that Congress assigned to the DOJ.

Although Kilborn, Torrisi, and Williamson assert their rights under Title II, their claims cannot substitute for the DOJ's sovereign responsibility to ensure uniform national enforcement. Private plaintiffs understandably seek relief tailored to their own circumstances and may lack the resources or perspective required to pursue systemic remedies. DOJ litigates not for private gain, but to safeguard compliance with the statutory framework Congress enacted under Title II.

1. Overlapping interests between private plaintiffs and the DOJ do not amount to adequate representation under FRCP 24(a)(2).

This Court has long recognized that Rule 24(a)(2) does not require intervenors to demonstrate adversity of interests to establish inadequate representation. *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972). Circuit courts have echoed the same principle, even when objectives overlap, private parties and government actors may diverge in focus, scope, or strategy. *See, e.g., Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 974 (3d Cir. 1998) (government's broad duties often conflict with narrower private interests); *Fund for Animals, Inc. v. Norton,* 322 F.3d 728, 736–37 (D.C. Cir. 2003) (agency's public obligations may render its representation inadequate). That distinction is especially pronounced here. Whereas private plaintiffs litigate to achieve their own immediate interests, the United States intervenes to achieve its Congressionally directed goal of the systemic enforcement of Title II's integration mandate nationwide.

The Respondents in this case, Kilborn, Torrisi, and Williamson, understandably

request relief calibrated to their own circumstances by prohibiting Franklin from institutionalizing them if the three-part test outlined in *Olmstead* is met in the future. R. at 25. The DOJ, however, has a broader interest in Title II litigation that reaches beyond the scope of the Respondents in this case. As this Court recognized, "unjustified institutional isolation … is properly regarded as discrimination based on disability." *Olmstead*, 588 U.S. at 597. Consistent with that understanding, Circuit Courts have recognized that claims by individuals facing a serious risk of institutionalization fall within the ADA's protections. *See, e.g.*, *Fisher,* 335 F.3d. at 1181. Scholars have reached a similar conclusion, explaining that the ADA was designed to prevent unnecessary institutionalization and segregation rather than merely respond after the fact. *See* Samuel R. Bagenstos, *The Past and Future of Deinstitutionalization Litigation*, 34 *Cardozo L. Rev.* 1, 5–6 (2012) (arguing that ADA deinstitutionalization suits are designed to prevent unnecessary institutionalization); Robert L. Burgdorf Jr., *The Americans with Disabilities Act: Analysis and Implications of a Second-Generation Civil Rights Statute*, 26 *Harv. C.R.-C.L. L. R*ev. 413, 430–31 (1991) (describing the ADA as a second-generation civil rights statute aimed at preventing exclusion and segregation before they occur).

To suggest that three individuals in one state can stand in for the federal government's responsibility to administer a nationwide integration mandate–and prevent discrimination against *all* those experiencing, or at risk of experiencing, unjustified institutionalization–ignores this Court's teaching that Rule 24 requires only a "minimal" showing of inadequacy. *Trbovich*, 404 U.S. at 538 n.10.

2. Excluding the DOJ in this case would undermine its congressional mandate to uniformly enforce Title II.

The Sixth Circuit has recognized that impairment of interest under Rule 24(a)(2) may arise from "stare decisis considerations." *Linton v. Comm'r of Health & Env't*, 973 F.2d 1311, 1319 (6th Cir. 1992). An adverse ruling could hinder the government's ability to litigate the scope of Title II elsewhere, and "potential stare decisis effects can be a sufficient basis for finding an impairment of interest." *Id.* Excluding DOJ would allow precedent on Title II's scope to develop only through private suits, leading to fragmented enforcement and undermining the integration mandate's consistent application nationwide.

Courts have already acknowledged DOJ's nationwide enforcement role as a basis for participation in systemic ADA litigation. For example, in *Disability Advocates*, the Eastern District of New York granted DOJ's motion to intervene permissively under Rule 24(b)(2), reasoning that "[t]his case falls squarely within this provision of the Rule." No. 03-CV-3209 (NGG), 2009 WL 4506301, at *2 (E.D.N.Y. Nov. 23, 2009). If DOJ's statutory responsibilities justified permissive intervention there, then they satisfy Rule 24(a)(2)'s less demanding requirement that the applicant's interests "may" be impaired and not adequately represented. That decision illustrates that the necessity of the DOJ's intervention in this case is tied to Congress's deliberate design, not from convenience, and that its participation is necessary to prevent Title II enforcement from becoming piecemeal. Thus, DOJ's interests are inadequately represented by Respondents in this case, and having satisfied the second disputed prong under Rule 24(a)(2), this Court should affirm the Circuit Court's holding that DOJ may intervene as of right in this litigation.

B. Excluding the DOJ would undermine Congress' purpose and the statutory scheme of Title II of the ADA.

Congress enacted Title II under its § 5 enforcement power to prevent unjustified segregation before it occurs. Excluding DOJ from litigation of this nature would frustrate Congress's design and fracture the cooperative federalism structure that the ADA exemplifies.

1. Congress made the prevention of segregation a statutory command rather than a mere policy preference.

Congress began the ADA with a clear vision, stating that "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency." 42 U.S.C. § 12101 (7). Congress reinforced this preventative vision in its committee reports. Both chambers of Congress recognized that existing laws were "inadequate to combat the pervasive problems of discrimination that people with disabilities are facing," and called for "omnibus civil rights legislation." S. Rep. No. 101-116, at 18–19 (1989); H.R. Rep. No. 101-485(II), at 40, 47 (1990). The Senate further explained that "[t]here is a compelling need to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities and for the integration of persons with disabilities into the economic and social mainstream of American life." S. Rep. No. 101-116, at 20 (1989).

To carry out these goals, Congress mandated that public entities must provide services "in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d). *Olmstead*'s holding further reinforced the discriminatory nature of unjustified isolation, and Circuit Courts have advanced this

principle. Without the DOJ's participation, these preventative protections risk inconsistent application. When read together, Congress' statutory findings, DOJ's implementing regulations, and this Court's decision in *Olmstead* point to the same conclusion: Title II is designed to operate preventatively, by using the strings of government to avoid unjustified segregation before it occurs.

2. The DOJ's intervention in this case preserves the ADA's cooperative federalism scheme.

Franklin argues that DOJ's participation intrudes on state sovereignty. The opposite is true. The ADA reflects a model of cooperative federalism: states retain control over their health programs for individuals with disabilities, but must administer them in a manner consistent with national anti-discrimination guarantees. This Court has recognized that when Congress authorizes federal enforcement of civil-rights protections, the United States may bring suit to protect those rights. *See United States v. Raines*, 362 U.S. 17, 25 (1960). And even where private damages are limited as under Title I, this Court recognized that prospective relief under *Ex parte Young* and suits by the United States remain available. *See Board of Trustees of the Univ. of Ala. v. Garrett,* 531 U.S. 356, 374 n.9 (2001).

While those cases addressed the government's authority to sue directly, the logic applies equally to intervention: if DOJ has sufficient interest to initiate litigation on its own, it necessarily has an interest "relating to the subject of the action" under Rule 24(a)(2). Federal courts have recognized as much, permitting DOJ to intervene in systemic Title II challenges. *See, e.g.*, *Disability Advocates*, 2009 WL 4506301, at 2.; *Florida*, 938 F.3d at 1248. Permitting DOJ to intervene here does not intrude upon or commandeer state policymaking. It simply ensures that states implement their

programs in conformity with the anti-discrimination floor that Congress expects all States to meet.

Excluding DOJ would instead fracture national enforcement, leaving individuals' rights to vary by geography and depend upon the capacity of private litigants. That outcome would be antithetical to the uniformity Congress deliberately created when it tethered Title II enforcement to Title VI's proven federal framework.

C. The dissent's concerns about executive overreach and litigation prejudice misunderstand Congress' design and Rule 24(a)(2).

Justice Hoffman's dissent suggested that recognizing DOJ's authority to intervene risks (1) unbounded executive power, and (2) undue litigation costs or judicial burdens. *See* 22 F.5d at 32–34 (12th Cir. 2024) (Hoffman, C.J., dissenting). Both concerns are unfounded when viewed alongside this Court's precedent, Congress's statutory design, and the criteria set forth in FRCP 24(a)(2) for intervention as of right.

1. DOJ's authority derives from Congress' express incorporation of Title VI's enforcement scheme.

After this Court's *Loper Bright* ruling, courts no longer defer to an agency's statutory interpretation under the doctrine of *Chevron* deference. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). The *Chevron* doctrine is gone. Statutory meaning is now a judicial question to be resolved *de novo*. The dissent's concern that DOJ would unilaterally expand its power through self-serving statutory interpretations misunderstands this post-*Loper Bright* reality.

DOJ's authority here does not come from an executive gloss on ambiguous text. It comes from Congress's express decision in 42 U.S.C. § 12133 to incorporate the Rehabilitation Act's enforcement framework, which itself incorporates Title VI's

remedial scheme. Title VI expressly authorizes federal enforcement actions. *See* 42 U.S.C. § 2000d(1). Congress made that choice, not DOJ.

Where DOJ interprets its own regulations, deference is even narrower and is only granted in instances when the *Kisor* test is met. *See generally Kisor*, 588 U.S. (2019). Far from unbounded power, this is a carefully cabined judicial doctrine. DOJ does not wield free-floating interpretive authority; it operates under clear limits set by both Congress and this Court. Thus, affirming DOJ's intervention authority does not enlarge executive discretion. It simply respects the enforcement structure Congress deliberately chose that places DOJ alongside private litigants to ensure systemic compliance.

2. Speculative concerns about litigation prejudice cannot override Rule 24(a)(2)'s command that intervention as a matter of right is granted when its criteria are satisfied.

Rule 24(a)(2) asks one question: whether, absent intervention, the movant's interest "may as a practical matter be impaired or impeded." Fed. R. Civ. P. 24(a)(2). It does not ask whether intervention might increase the length of proceedings or impose marginal litigation costs. The dissent's focus on judicial resources introduces an element not considered by the Rule. *See* 22 F.5d at 33–34 (12th Cir. 2024) (Hoffman, C.J., dissenting).

Consistent with the Federal Rules, this Court has emphasized that considerations of litigation economy may not override Rule 24(a)(2) when its criteria are otherwise satisfied. To the contrary, the Court has emphasized that intervention is mandatory when the Rule's requirements are met. *See Trbovich* 404 U.S. at 538–39 (permitting intervention even though the government was already a party, because the intervenor's distinct interest might otherwise go unprotected).

Excluding the DOJ in this action would fragment enforcement of rights of individuals with disabilities across the country. As the District Court recognized, Franklin's reduction of community supports places thousands of individuals at risk of unnecessary segregation. Private plaintiffs alone cannot ensure consistent application of Title II. Although the statute itself speaks in terms of preventing discrimination, Congress's incorporation of Title VI reflects a design for nationwide consistency, and DOJ's participation gives effect to that design. Concerns about judicial efficiency cannot outweigh the statutory command and the civil-rights stakes at issue.

CONCLUSION

This litigation strikes at the very core of the effect and scope of the Americans with Disabilities Act for disabled and able-bodied Americans. There is a clear path forward for this Court to affirm the District of Franklin and Twelfth Circuit's judgments below. Such a move standardizes access to judicial remedies for Americans living with the distress of potential unjustified institutionalization as Congress intended and this Court interpreted in 1999, and affords the proper level of deference to the DOJ's interpretation of the integration mandate. Second, affirming this decision confirms that the Federal Rules are clear: the United States has an irreplicable interest in this litigation in ensuring state compliance with the ADA and its regulations that cannot be adequately represented by private plaintiffs alone. We ask this Court to affirm on both issues.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT