No. 25-140

IN THE

SUPREME COURT OF THE UNITED STATES

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

Petitioners,

v.

SARAH KILBORN, ET. AL.,

Respondents.

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

BRIEF FOR THE RESPONDENTS

September 9, 2025

Submitted by:

TEAM 3421

Counsel for Respondents

QUESTIONS PRESENTED

1. Whether Title II of the Americans with Disabilities Act allows individuals who are not currently institutionalized but are at serious risk of future institutionalization and segregation to maintain a claim for discrimination when such a claim is consistent with the statute, the integration mandate regulations, DOJ guidelines, and the decisions of six federal circuits.

2. Whether the United States, as the entity expressly authorized by Congress to enforce Title II of the Americans with Disabilities Act and issue its implementing regulations, may initiate suit or intervene under Federal Rule of Civil Procedure 24(a)(2) to protect the public's interest in enforcing the statute.

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The Decisions and Orders of the United States District Court for the District of Franklin are unreported and set out in the Record. R. at 1–11, 12–21. The opinion of the United States Court of Appeals for the Twelfth Circuit is also unreported and provided in the Record. *Id.* at 22–28.

RELEVANT PROVISIONS

This case involves Title II of the Americans with Disabilities Act ("ADA" or "Title II"), 42 U.S.C. §§ 12131–12134, which provides 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." *Id.* § 12132. A "qualified individual with a disability" is one who "meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." *Id.* The Department of Justice's ("DOJ") implementing regulation, known as the "integration mandate," requires that "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) (2016).

This case also involves the Federal Rule of Civil Procedure 24(a)(2), which allows intervention as of right where the movant "claims an interest relating to the property or transaction that is the subject of the action" and disposition "may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). Title II incorporates the enforcement provisions of Section 505 of the Rehabilitation Act, 29 U.S.C. § 794a, which adopts the remedial framework of Title VI of the Civil Rights Act, 42 U.S.C. §§ 2000d–2000d-7, authorizing federal agencies, including the DOJ, to

enforce Title II compliance "by any other means authorized by law." 42 U.S.C. § 2000d-1; 28 C.F.R. § 42.108 (2003).

For the Court's reference, all pertinent statutory and regulatory provisions are set forth in the Appendix.

STATEMENT OF THE CASE

STATEMENT OF THE FACTS

The State of Franklin ("Franklin") is one of the largest and most sparsely populated states in the country, with nearly 80% of its residents living more than two hours from the State's only community-based mental health facility. R. at 15–16. While Franklin operates several state-run hospitals that provide inpatient psychiatric treatment, it maintains just one state-operated community facility,[1] Platinum Hills, which does not offer inpatient services. *Id.* at 12–15.

Respondents Sarah Kilborn, Eliza Torrisi, and Malik Williamson each live with serious mental health conditions and have experienced repeated cycles of institutionalization in Franklin's state-run hospitals, which are subject to Title II. *Id.*; *see also* 42 U.S.C. §§ 12131–32. Kilborn has been diagnosed with severe bipolar disorder and continues to suffer debilitating episodes that require frequent hospitalization. R. at 12–13. Torrisi, also diagnosed with bipolar disorder, experiences repeated manic cycles with only brief months of stability separating each episode, leaving her at constant risk of readmission. *Id.* at 14. Williamson, diagnosed with schizophrenia, has cycled in and out of Franklin's inpatient and outpatient facilities for the past fifty years after

[1] Community health facilities are mental health services in a setting that allows patients to integrate into the community far more than patients that are institutionalized at hospitals. *See Community Mental Health Center*, American Psychological Association Dictionary of Psychology (Apr. 19, 2018), https://dictionary.apa.org/community-mental-health-center.

experiencing hallucinations and delusions that have led him to threaten harm to himself and others. *Id.* at 14–15.

In each case, Respondents' treating physicians have determined that they were appropriate candidates for community-based care. Id. at 12–15. But they were kept institutionalized because Franklin lacks sufficient services to facilitate timely discharge. *Id.* Specifically, due to budget cuts, Platinum Hills, Franklin's only community health facility, no longer offers an inpatient program to meet Respondent's needs. *Id.* There is also no state-operated or privately operated community facility within two to four hours of Respondents' homes that can provide what they need. *Id.*

Although Respondents are no longer institutionalized, the District Court of Franklin determined that they continue to be at risk of being institutionalized in the future. *Id.* at 12–16, 23.

PROCEDURAL HISTORY

Respondents Sarah Kilborn, Eliza Torrisi, and Malik Williamson filed suit against the State of Franklin in the United States District Court for the District of Franklin in February 2022, alleging that Franklin's failure to provide sufficient community-based mental health services violated Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131–12134. R. at 1–2, 11–13. Respondents sought injunctive relief, arguing that Franklin's systemic deficiencies placed them at serious risk of unnecessary institutionalization in violation of the ADA's integration mandate. *Id.* at 11–13. Shortly after Respondents filed their complaint, the DOJ Civil Rights Division launched an investigation into the State of Franklin Department of Social and Health Services' compliance with Title II. *Id.* at 2.

On May 27, 2022, the United States, through the Attorney General, moved to intervene on Respondents' behalf after determining their claims were substantiated. *Id.* The United States also filed a complaint alleging that Petitioners violated Title II of the ADA by failing to provide

adequate community mental health facilities for individuals at risk of unnecessary institutionalization and segregation. *Id.* Respondents consented to the intervention, and Petitioners opposed the motion. *Id.*

The District Court denied Petitioners' motion for summary judgment, holding that the pertinent statutory and regulatory provisions of the ADA permit individuals who are at serious risk of institutionalization or segregation, even if not currently institutionalized, to maintain a Title II claim. *Id.* at 20. The District Court also granted the United States' motion to intervene as of right under Federal Rule of Civil Procedure 24(a)(2), finding that the Attorney General has an enforceable interest in the implementation and enforcement of Title II and that excluding the United States would impair its ability to protect that interest. *Id.* at 3–9. Petitioners appealed, and the Twelfth Circuit affirmed in a 2–1 decision, holding that Respondents' claims were both legally recognized under Title II and that the United States properly intervened. *Id.* at 22–30. In dissent, Judge Hoffman argued that Title II should not extend to individuals who are not currently institutionalized and that allowing such claims improperly expands the statute's scope beyond Congress's intent. *Id.* at 31–38.

Petitioners filed a writ of certiorari, which this Court granted and limited to the following questions: (1) whether Respondents may maintain a Title II claim under the ADA based on a serious risk of institutionalization or segregation, even if not currently institutionalized; and (2) whether the United States has an interest relating to the subject matter of a private ADA action and thus can intervene as of right under Federal Rule of Civil Procedure 24(a)(2) to enforce Title II of the ADA. *Id.* at 39.

SUMMARY OF THE ARGUMENT

This Court should affirm the Twelfth Circuit's judgment because Respondents may bring and maintain a legally recognized claim under the ADA and because the United States, through the DOJ, has the authority to intervene to enforce the statute under Rule 24(a)(2) of the Federal Rules of Civil Procedure.

To determine whether Respondents state a legally recognized Title II claim, the Court should first apply the traditional tools of interpretation by examining the statute and the effectuating regulation's text, structure, purpose, and the policy the ADA embodies. If any ambiguity remains, the Court should give controlling weight to the DOJ's authoritative interpretation under the *Auer v. Robbins* deference clarified in *Kisor v. Wilkie*. Alternatively, the DOJ's interpretation should still be followed under the standard set forth in *Skidmore v. Swift & Co.*

First, Respondents can maintain their Title II claim because the statutes', 42 U.S.C. §§ 12131–12134, plain language omits any limitation restricting protection to individuals already institutionalized, demonstrating Congress's intent to include those at serious risk of unnecessary institutionalization. Excluding these individuals would also contradict the ADA's legislative goals of preventing unjustified segregation, promoting integration, and protecting equal access to services. Choosing a narrow interpretation would further undermine public policy by forcing people to endure the very harm Congress sought to prevent. The integration mandate, 28 C.F.R. § 35.130(d) (2016), effectuates Title II and reinforces this broader reading. The DOJ's consistent guidance confirms that the mandate's protections extend to those facing the risk of institutionalization.

Second, even if this Court finds ambiguity in the integration mandate, the DOJ's interpretation should control under the *Auer* and *Kisor* frameworks because it is reasonable, reflects the DOJ's expertise, represents its authoritative and considered judgment, and is consistent with its longstanding position. Alternatively, even if *Auer* deference does not apply, the DOJ's interpretation warrants *Skidmore* respect because it is thorough, well-reasoned, consistent with prior pronouncements, and issued by the agency Congress expressly charged with effectuating Title II. Thus, because there exists a legally recognized claim, this Court should affirm the Twelfth Circuit's judgment.

In addition to affirming the Twelfth Circuit's legally recognizable claim determination, this Court should also affirm the decision that the United States, through the DOJ, has the authority to intervene under Rule 24(a)(2). Rule 24(a)(2) requires an intervenor to fulfill the following factors to intervene as of right: (1) timely application for intervention; (2) an interest relating to the subject matter of the action; (3) potential impairment of that interest; and (4) inadequate representation of the interest by the existing parties. Factor two is satisfied on two independent grounds. First, the United States' substantial interest in enforcing the ADA and protecting individuals with disabilities independently fulfills Rule 24(a)(2)'s requirements. Second, even if an independent cause of action were required, Congress expressly granted the United States federal enforcement authority under 42 U.S.C. § 12133 by incorporating the Rehabilitation Act's enforcement framework. This structure reflects Congress's intent to give the federal government a central role in safeguarding ADA protections, and public policy further supports this authority because DOJ intervention ensures systemic enforcement beyond the interests of private plaintiffs.

Moreover, the remaining Rule 24(a)(2) factors are satisfied: the DOJ's motion was timely, filed within weeks of substantiating Respondents' claims; the United States' interests would be

impaired absent intervention because an adverse ruling could restrict future enforcement authority; and private plaintiffs cannot adequately represent the DOJ's broader institutional interests, as they seek individual relief while the DOJ pursues systemic remedies on behalf of all affected individuals.

Thus, because the United States has both a substantial statutory interest in enforcing Title II and satisfies all Rule 24(a)(2) requirements, this Court should affirm the Twelfth Circuit's decision permitting the DOJ to intervene.

ARGUMENT

I. THE TWELFTH CIRCUIT'S DECISION SHOULD BE AFFIRMED BECAUSE TITLE II'S TEXT, PURPOSE, AND POLICY PROTECT INDIVIDUALS AT SERIOUS RISK OF INSTITUTIONALIZATION, THE INTEGRATION MANDATE CONFIRMS THIS COVERAGE, AND THE DOJ'S CONSISTENT INTERPRETATION WARRANTS DEFERENCE UNDER *KISOR* OR, AT MINIMUM, *SKIDMORE*.

This Court should affirm the Twelfth Circuit's decision and hold that Respondents may maintain a Title II claim because the statute, its implementing regulations, and the DOJ's authoritative guidance all confirm that the ADA protects individuals facing a serious risk of institutionalization, not just those already institutionalized.[2] Title II provides that "no qualified individual with a disability . . . by reason of such disability, shall be excluded from participation

[2] The issue here is whether the District Court properly granted Respondents' and the United States' motions for summary judgment. R. at 24. Summary judgment is an issue of law that is appropriate when there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). This Court should review the District Court's decision de novo. *See Salve Regina Coll. v. Russell*, 499 U.S. 225, 231 (1991) (reviewing a motion for summary judgment regarding a question of law de novo).

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.[3]

In *Olmstead v. L.C. by Zimring*, 527 U.S. 581, 600 (1999), this Court recognized that unjustified institutionalization constitutes discrimination because it denies individuals the benefits of services "in the most integrated setting appropriate" as determined by the State's treatment professionals. *Olmstead* confirmed that individuals who are currently institutionalized may bring claims under Title II. *Id.* The question presented here is whether individuals who face a serious risk of institutionalization are also entitled to maintain such claims. Resolving that question requires examining the statute's text, legislative history, regulatory framework, and guiding principles of agency deference. A review of these factors supports the conclusion that Respondents may maintain a Title II claim under the ADA.

First, Title II's language, legislative history, and public policy demonstrate that Congress intended its protections to extend to individuals at serious risk of institutionalization. Second, the Attorney General's integration mandate, adopted pursuant to Congress's express delegation, confirms this interpretation and clarifies that protecting individuals before institutionalization does not implicate the fundamental alteration defense. Third, even if ambiguity exists, the DOJ's authoritative interpretation warrants *Auer* deference under *Kisor* because it is reasonable, consistent, within the agency's expertise, and reflects its considered judgment. *See Kisor v. Wilkie*, 588 U.S. 558 (2019); *see also Auer v. Robbins*, 519 U.S. 452 (1997). Finally, even if the Court

[3] To establish a Title II discrimination claim, a plaintiff ordinarily must show: (1) they are a qualified individual with a disability, (2) they were excluded from participation in or denied the benefits of a public entity's services, programs, or activities — thereby discriminated against, and (3) this discrimination was motivated by the individual's disability. *Duvall v. County of Kitsap*, 260 F.3d 1124, 1135 (9th Cir. 2001). This standard is not at issue before the Court, but if individuals facing a serious risk of institutionalization are permitted to bring a claim, they would still be required to satisfy these elements.

declines to apply *Auer*, the DOJ's longstanding and well-reasoned interpretation is entitled to *Skidmore* standard respect based on its thoroughness, consistency, and persuasiveness. *See Skidmore v. Swift & Co.*, 323 U.S. 134 (1944).

A. Title II's Text, Legislative Intent, and Public Policy Confirm That Its Protections Extend to Individuals Facing a Serious Risk of Institutionalization, Not Just Those Already Confined.

Under the Administrative Procedure Act, courts are required to use independent judgment to determine the meaning of statutory provisions. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394, 400 (2024). The role of the reviewing court is to effectuate the will of Congress subject to constitutional limits. *Id.* at 395. Considering the statute's text, legislative history, and public policy, the best reading of 42 U.S.C. § 12132 is that its protections encompass both individuals who are currently institutionalized and those facing a serious risk of institutionalization.

Petitioners may argue that *Olmstead*, when analyzing Title II, did not require integration for those who are not currently institutionalized. *See* R. at 35 (Hoffman, C. J., dissenting); *see also Olmstead*, 527 U.S. at 593–594 (addressing a case where all plaintiffs were institutionalized at the time of suit and thus never reaching the question of whether Title II protections extend to individuals facing serious risk of institutionalization). Reliance on *Olmstead* for this argument would be misplaced because the Court's analysis was limited to the facts before it. *Id.* That the decision did not expressly discuss individuals at risk of institutionalization does not imply their exclusion—just as the Court nowhere limited Title II protections exclusively to those currently institutionalized. When the Court declines to resolve a question not squarely presented, the omission cannot be construed as dispositive. *See Webster v. Fall*, 266 U.S. 507, 511 (1925) ("Questions which merely lurk in the record, neither brought to the attention of the court nor ruled

upon, are not to be considered as having been so decided as to constitute precedents."). Because *Olmstead* did not address whether Title II protects individuals at serious risk of institutionalization, this Court is now left to resolve this question. The proper starting point is the statute itself, whose text, purpose, and policy confirm that Title II's protections encompass these individuals.

1. Title II's Plain Language Protects Individuals Facing a Serious Risk of Institutionalization Because Congress Imposed No Limitation Requiring Current Institutionalization.

The analysis of a statute begins by asking whether the statute's language has a plain and unambiguous meaning. *Robinson v. Shell Oil Co.,* 519 U.S. 337, 340 (1997). Title II of the ADA provides that "no qualified individual with a disability . . . by reason of such disability, shall 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. Nothing in this language limits its protections to individuals who are currently institutionalized, and this omission necessarily indicates that Congress intended Title II to apply broadly, including to those at serious risk of institutionalization. *See Russello v. United States*, 464 U.S. 16, 23 (1983) ("Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (citation omitted); *see also Salinas v. U.S. R.R. Ret. Bd.*, 592 U.S. 188, 197–98 (2021) (relying on the absence of limiting language to interpret "any final decision" broadly); *United States v. Ron Pair Enters.,* 489 U.S. 235, 237 (1989) (discussing how when the statutory language is clear and unqualified, it must be enforced according to its terms).

Furthermore, Title II's definition of a "qualified individual with a disability"' confirms that Respondents fall within the statute's protections. A "qualified individual with a disability" is "an

individual with a disability who . . . meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity." 42 U.S.C. § 12131(2). The only "essential eligibility requirements" relate to their entitlement to Franklin's community-based mental health services and not to whether they are currently institutionalized.

2. Title II's Legislative History Confirms That Congress Intended to Protect Individuals Facing Serious Risk of Institutionalization Because the ADA's Goals Necessitate Prophylactic Prevention of Unnecessary Institutionalization and Segregation.

Because § 12132's text speaks directly to the issue, the Court need not rely on legislative history. *See United States v. Gonzales*, 520 U.S. 1, 6 (1997). However, if the statute is deemed ambiguous, the ADA's structure and legislative history still reinforce Respondents' position by confirming that 42 U.S.C. § 12132 protects both individuals who are currently institutionalized and those at serious risk of institutionalization. *See* 73 Am. Jur. 2d *Statutes* § 83 (2025) (explaining that statutes must be interpreted and read in connection with the whole body of law).

In enacting Title II, Congress expressly recognized the longstanding pattern of discrimination against individuals with disabilities. 42 U.S.C. § 12101(a)(1); *Id.* § 12101(a)(2) ("[H]istorically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem[.]"). Relying on a study by the U.S. Commission on Civil Rights when enacting the ADA, Congress recognized that institutionalization was one of the "critical areas" where discrimination "persists." *Id.* § 12101(a)(3); *see* H.R. Rep. No. 485, 101st Cong., 2d. Sess. Pt. 3 (1990). Consistent with this finding, Congress declared the national goal of ensuring that individuals with disabilities have

equal "opportunity, full participation, independent living, and economic self-sufficiency." 42 U.S.C. § 12101(a)(7).

Because Congress recognized that unnecessary institutionalization is a form of discrimination and the ADA's purpose is to eliminate discrimination, Title II's protections necessarily extend to individuals at serious risk of institutionalization, not just those already institutionalized. Limiting coverage only to people who have already been segregated would undermine the statute's purpose by forcing individuals to suffer the very harm Congress sought to prevent before gaining protection. Kilborn, Torrisi, and Williamson exemplify this risk, having each been institutionalized multiple times and discharged only to return. R. at 13–15. Title II was designed to address exclusion and segregation at their source, making proactive prevention central to fulfilling the ADA's goals of integration, independence, and equality.

3. Public Policy Favors Extending Title II's Protections to Individuals Facing Serious Risk of Institutionalization Because Forcing Unnecessary Institutionalization Inflicts Irreversible Harm on Vulnerable Populations.

Requiring individuals to undergo unnecessary institutionalization before challenging a law or policy that threatens to segregate them would undermine the protections guaranteed by Title II and expose vulnerable individuals to further harm. In *Fisher v. Oklahoma Health Care Auth.*, the Tenth Circuit rejected the notion that plaintiffs must needlessly submit to segregation before seeking relief under this statute. 335 F.3d 1175, 1181 (10th Cir. 2003). Moreover, in *M.R. v. Dreyfus*, the Ninth Circuit recognized that "[i]nstitutionalization sometimes proves irreversible." 697 F.3d 706, 735 (9th Cir. 2012). Furthermore, in *Waskul v. Washtenaw Cnty. Cmty. Mental Health*, the Sixth Circuit acknowledged that discrimination often occurs before institutionalization.

979 F.3d 426, 460 (6th Cir. 2020). A narrow reading, like Petitioners advocate for, would convert the ADA's protections into a purely remedial tool, one that is plainly insufficient.

This Court should reject Petitioners' narrow interpretation and affirm that Title II protects individuals facing the threat of unnecessary institutionalization, ensuring the ADA fulfills its purpose as a proactive safeguard against discrimination and segregation—a conclusion reached by six circuit courts that have considered this same issue. *See Davis v. Shah*, 821 F.3d 231 (2d Cir. 2016); *Pashby v. Delia*, 709 F.3d 307 (4th Cir. 2013); *Waskul*, 979 F.3d 426; *Radaszewski ex rel. Radaszewski v. Maram*, 383 F.3d 599 (7th Cir. 2004); *Steimel v. Wernert*, 823 F.3d 902 (7th Cir. 2016); *Dreyfus*, 697 F.3d 706; *Fisher*, 335 F.3d at 1181–82.

B. The Integration Mandate Warrants a Broad Interpretation Because Its Text, Purpose, and DOJ Guidance Demonstrate That It Was Intended to Protect Individuals at Serious Risk of Institutionalization Without Implicating the Fundamental Alteration Defense.

When Congress passes legislation, it explicitly authorizes federal agencies to effectuate provisions of the law through rulemaking. *See Biden v. Nebraska*, 600 U.S. 477, 494 (2023); *see also Chrysler Corp. v. Brown*, 441 U.S. 281, 302–03 (1979) (recognizing that Congress may delegate quasi-legislative authority to agencies, and properly promulgated regulations carry "the force of the law"). Congress tasked the Attorney General, and more broadly the DOJ, with promulgating the ADA and further instructed that the regulations passed be "consistent with this chapter and with the coordination regulations . . . applicable to recipients of Federal financial assistance under" § 504 of the Rehabilitation Act. 42 U.S.C. § 12134(a)–(b); *see also* 29 U.S.C. § 794(a).

Pursuant to this authority, the DOJ adopted regulations modeled on § 504, including "the integration mandate," which requires that "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) (2016). The regulations further explain that "the most integrated settings" are those that "enable[] individuals with disabilities to interact with nondisabled persons to the fullest extent possible." 28 C.F.R. pt. 35, app. B (2010); *see also* 28 C.F.R. § 41.51(d) (1998) (stating that any party that receives federal funds must "administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons").

Considering the regulation's text, purpose, and public policy, the best reading, like the statute, extends its protection to individuals facing the risk of institutionalization, not just those already institutionalized.

Turning first to the plain language, the integration mandate—like the statute—contains no restriction limiting its protections to currently institutionalized individuals and therefore encompasses those facing a serious risk of institutionalization as qualified individuals with a disability. *See Steimel*, 823 F.3d at 912. In *Steimel*, the Seventh Circuit held that the integration mandate applies to individuals at risk of institutionalization by applying precisely this same reasoning. *Id.*; *see also Pashby*, 709 F.3d at 322 (same); *Fisher*, 335 F.3d at 1181 (same).

The Fifth Circuit disagrees. *See United States v. Mississippi*, 82 F.4th 387, 392 (5th Cir. 2023) (declining to adopt the broad interpretation as "nothing in the text of Title II, its implementing regulations, or *Olmstead* suggest that a *risk of institutionalization*, without actual institutionalization, constitutes actionable discrimination" and courts "may not enhance the scope of a statute because [courts] think it good policy or an implementation of Congress's unstated

will") (emphasis in original). However, the Fifth Circuit in Mississippi misapplied § 12132 by bypassing the statute's plain language—the starting point of statutory interpretation—and reading in a limitation Congress never imposed. *See Robinson*, 519 U.S. at 341. By narrowing Title II beyond its unambiguous text, it is the Fifth Circuit, not Respondents, that departs from the statute's ordinary meaning. This Court should thus affirm the Twelfth Circuit's decision and hold that Respondents may maintain a Title II claim because it's the integration mandate confirms that the ADA protects individuals facing a serious risk of institutionalization.

After analyzing the plain language, courts next consider the regulation's purpose to determine its meaning. *Kisor*, 588 U.S. at 574. Because the integration mandate effectuates Title II, it necessarily carries the same legislative intent underlying the statute, which reflects Congress's goal of broadly protecting individuals with disabilities, including those at serious risk of institutionalization. *See infra* Part II.A.2. Furthermore, the DOJ has issued official guidance clarifying that both the ADA and *Olmstead* "extend to persons at serious risk of institutionalization or segregation and are not limited to individuals currently in institutional or other segregated settings." *See* U.S. Dep't of Justice, *Statement of the Department of Justice on the Integration Mandate of Title II of the ADA and Olmstead v. L.C.*, http://www.ada.gov/olmstead/q&a_olmstead.htm (last updated Feb. 25, 2020). Although this guidance was issued after the regulation was promulgated, it reflects the DOJ's authoritative interpretation of its own rule and lends significant weight to the conclusion that, at the time of drafting 28 C.F.R. § 35.130(d) (2016), the agency intended the integration mandate to protect individuals facing a serious risk of institutionalization.

Third, as addressed in the public policy argument for interpreting 42 U.S.C. § 12132, adopting Petitioners' narrow reading would frustrate Congress's intent and create harmful

consequences by leaving individuals vulnerable to forced institutionalization and denying them protection until after the harm occurs, an outcome Congress sought to prevent when enacting the ADA. *See infra* Part II.A.3.

Any argument extending Title II's protections to individuals at serious risk of institutionalization would require states to redesign services and therefore constitute a "fundamental alteration" is misplaced. *See Olmstead*, 527 U.S. at 603 (finding that the ADA requires only "reasonable modifications" and permits a state to refuse alterations that will result in a fundamental alteration of the program or service). While this limitation allows states to deny modifications that would fundamentally alter the nature of the service, program, or activity, this argument is premature. 28 C.F.R. § 35.130(b)(7) (2016). The fundamental alteration defense concerns the scope of remedies available once a violation is established, not whether a claim may be brought in the first place. *Olmstead*, 527 U.S. at 597. The question on this writ of certiorari is claim availability under the integration mandate and not what specific accommodations, if any, would ultimately be required. R. at. 39. Courts consistently hold that the possibility of a fundamental alteration defense does not bar individuals from bringing claims under the integration mandate. *Olmstead*, 527 U.S. at 597; *Fisher*, 335 F.3d at 1181.

In analyzing the integration mandate and the Title II provisions it effectuates, this Court should affirm the Twelfth Circuit's holding that Respondents may bring their claim. R. at 21. Applying the plain language, purpose, and public policy considerations, the best reading of the regulation includes protection for individuals at serious risk of institutionalization, not only to those currently institutionalized.

C. Even if the Court Finds the Integration Mandate Ambiguous, the DOJ's Interpretation Warrants Deference Under *Kisor* Because It Is Reasonable, Authoritative, Within the Agency's Expertise, and Consistent with Prior Positions.

Because the integration mandate unambiguously extends Title II's protections to individuals facing a serious risk of institutionalization, this Court need not defer to the DOJ's interpretation and should apply the regulation's plain meaning. *Kisor v. Wilkie*, 588 U.S. at 573 (holding that when a regulation is not genuinely ambiguous, there is no reason for deference and courts must give effect to the regulation's plain meaning). However, if the Court were to conclude that ambiguity exists, it should evaluate the DOJ's interpretation under the framework clarified in *Kisor*, which utilized the traditional deference once afforded under *Auer*. *See id.* Under *Auer*, 519 U.S. at 462–63, courts generally defer to an agency's reasonable interpretation of its own ambiguous regulations. *See also Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 414 (1945) (noting that deference is appropriate "if the meaning of the words used is in doubt").[4]

In *Kisor*, the Court emphasized that *Auer* deference is not automatic and established a rigorous inquiry before deference applies. 588 U.S. at 571–74. A court should first exhaust all traditional tools of construction to confirm that the regulation is "genuinely ambiguous." *Id.* at 574. Even then, deference is appropriate only when the agency's interpretation is (1) reasonable, (2) reflects its authoritative and considered judgment, (3) falls within the agency's substantive expertise, and (4) is consistent with its prior positions. *Id.* at 575–79. Here, the DOJ's integration mandate fulfills all applicable factors and therefore this Court should defer to its broad interpretation.

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[4] As *Loper Bright* addresses ambiguities in *statutes*, it does not apply to this scenario which addresses the issue of agency interpretations of their own regulations. *See Loper*, 603 U.S. at 369.

1. The DOJ's Guidance Warrants Deference Under *Kisor*'s First Factor Because It Is Reasonable in Interpreting the Integration Mandate by Resolving Ambiguity Without Expanding the Regulation's Plain Text.

Under *Kisor*'s first factor, an agency's interpretation should be reasonable, meaning it should fall "within the zone of ambiguity the court has identified after employing all its interpretive tools." *Kisor*, 588 U.S. at 576. The regulation's text, structure, and history define the outer limits of permissible interpretation, and any agency position must operate within those boundaries. *Id.*; *see United States v. Xiaorong You*, 74 F.4th 378, 397 (6th Cir. 2023) (holding that the Sentencing Commission's commentary fell within the "zone of ambiguity" because the context and purpose of the guidelines was to clarify that the word "loss" can also mean intended loss as the agency's purpose was to assess both seriousness and culpability).

Here, the "zone of ambiguity" in this regulation is whether the integration mandate requires "qualified individuals with disabilities" to also be institutionalized at the time of bringing the suit. 28 C.F.R. § 35.130(d) (2016). The integration mandate's plain text does not expressly specify whether a plaintiff must be institutionalized before bringing a Title II ADA claim. *See id.* Similar to *Xiaorong*, 74 F.4th at 397, where the commentary fell within the "zone of ambiguity" because its purpose was to clarify "loss," here, the DOJ's guidance resolves this ambiguity by stating that the ADA protections extend to those who are:

> [a]t a serious risk of institutionalization or segregation and are not limited to individuals currently in institutional or other segregated settings. Individuals need not wait until the harm of institutionalization or segregation occurs or is imminent. For example, a plaintiff could show sufficient risk of institutionalization to make out a . . . [Title II] violation 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.

U.S. Dep't of Justice, *Statement of the Department of Justice on the Integration Mandate of Title II of the ADA and Olmstead v. L.C.*, http://www.ada.gov/olmstead/q&a_olmstead.htm (last updated Feb. 25, 2020).

Far from expanding the regulation, the guidance implements its plain language by identifying when discrimination arises under the integration mandate, such as when a public entity's failure to provide or maintain community services is likely to force an individual into institutional care. *Id.* This interpretation is reasonable because it fills the gap Congress left open, effectuates Title II's goal of "provid[ing] clear, strong, consistent, enforceable standards" addressing disability discrimination, 42 U.S.C. § 12101(b)(2), and reflects the Supreme Court's recognition that "unjustified isolation" in the form of institutionalization constitutes discrimination under Title II. *See Olmstead*, 527 U.S. at 597.

Thus, the guidelines serve as a reasonable interpretation of the integration mandate because they fit within the "zone of ambiguity" by providing clarification on ambiguity in the regulation that does not expand the plain text but also aligns with Congress's broader purposes in the ADA.

2. The DOJ's Integration Mandate Guidance Warrants *Auer* Deference Because It Reflects the Agency's Official and Considered Judgment as a Formal Statement Issued by the Department Itself.

An agency's regulatory interpretation warrants controlling weight only when it reflects the agency's authoritative and considered judgment, rather than an ad hoc or informal position. *Kisor*, 588 U.S. at 577. As *Kisor* explains, not every agency statement qualifies for deference, but the interpretation must at least represent the agency's official position and emanate from those with authority to speak on its behalf. *Id.*

In *Paralyzed Veterans of Am. v. D.C. Arena L.P.*, the court found that the speech of a mid-level official of an agency was not considered authoritative because his position lacked the authority to speak on behalf of the agency. 117 F.3d 579, 587 (D.C. Cir. 1997). Similarly, in *New York State Dep't of Soc. Servs. v. Bowen*, the court held that a memorandum that detailed a telephone conversation between employees was not an authoritative pronouncement because it lacked formality. 835 F.2d 360, 365 (D.C. Cir. 1987).

Here, the DOJ guidelines reflect the DOJ's official position on the integration mandate and thus should be granted *Auer* deference. Unlike the speech of a mid-level official of an agency in *Paralyzed Veterans*, 117 F.3d at 579, the speech here "catalogs and explains the positions the Department of Justice has taken in its Olmstead enforcement." U.S. Dep't of Justice, *Statement of the Department of Justice on the Integration Mandate of Title II of the ADA and Olmstead v. L.C.*, http://www.ada.gov/olmstead/q&a_olmstead.htm (last updated Feb. 25, 2020). Moreover, unlike the informal memorandum in *Bowen*, 835 F.2d at 365, the guidelines are a formal authoritative pronouncement that highlight "the views of the Department of Justice only." U.S. Dep't of Justice, *Statement of the Department of Justice on the Integration Mandate of Title II of the ADA and Olmstead v. L.C.*, http://www.ada.gov/olmstead/q&a_olmstead.htm (last updated Feb. 25, 2020). As such, the DOJ interpretations stem from the agency's head and thus should be granted *Auer* deference.

3. The DOJ's Guidelines Warrant *Auer* Deference Because Interpreting the Integration Mandate Falls Squarely Within the Agency's Substantive Expertise as the Entity Congress Charged with Implementing Title II.

A regulatory interpretation warrants controlling weight only if it implicates the agency's substantive expertise. *Kisor*, 588 U.S. at 577–78. Agencies are presumed to have a nuanced

understanding of the regulations they administer, particularly when Congress has expressly delegated rulemaking authority. *Id.* (considering how the TSA had a specialized understanding of security risks and thus could accordingly be tasked with assessing the security risks); *see United States v. Boler*, 115 F.4th 316, 328 (4th. Cir. 2024) (discussing how the Sentencing Commission had substantive expertise as it would review and refine its Guidelines in light of recent decisions from courts). However, *Kisor* also recognizes limits: some interpretive issues fall "more naturally into a judge's bailiwick." *Id.*; *see also Adams Fruit Co. v. Barrett*, 494 U.S. 638, 649–50 (1990) (holding that the court rather than the agency should interpret a judicial review provision due to the agency's lack of substantive expertise in this area); *Gonzales v. Oregon*, 546 U.S. 243, 257 (2006) (denying *Auer* deference when an agency interprets a rule that essentially parrots the statute because the agency is not using its "its expertise and experience to formulate a regulation").

Here, by contrast, the DOJ guidelines implicate the DOJ's expertise in interpreting the ambiguous integration mandate. Congress expressly directed the DOJ to issue regulations implementing Title II, 42 U.S.C. § 12134(a)–(b), and this Court has recognized that "the well-reasoned views of the agencies implementing a statute constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." *Olmstead*, 527 U.S. at 587. Similarly to the Sentencing Commission in *Boler* which was found to have expertise because it issued interpretations to incorporate various court decisions, 115 F.4th at 328, here, the DOJ also has expertise because it issued its interpretation post-*Olmstead* to incorporate the court's decision. Moreover, unlike in *Adams Fruit*, where the provision at issue was judicial in nature and thus more appropriate for courts to interpret, the integration mandate falls squarely within the DOJ's delegated regulatory authority. 494 U.S. at 649–50; *see also* 42 U.S.C. § 12134(a)–(b). And unlike *Gonzales*, where the agency simply restated statutory language without exercising any

independent judgment, the DOJ here promulgated its own regulation and relied on its substantive expertise to interpret and effectuate Congress's intent to broaden protections for individuals with disabilities. *Gonzales v. Oregon*, 546 U.S. at 257; *see also* 42 U.S.C. § 12101(a)(7).

As such, the DOJ's guidelines warrant *Auer* deference because the regulation falls within the agency's bailiwick, and the DOJ relied on that expertise in crafting the regulation, rather than merely restating the statute.

4. The DOJ's Guidelines Warrant *Auer* Deference Because They Reflect the Agency's Fair and Considered Judgment, Were Issued to Provide Clarity and Consistency, and Do Not Conflict with Any Prior Interpretation or Create Unfair Surprise.

An agency's interpretation is not considered its fair and considered judgment if it is "merely a convenient litigating position or post hoc rationalization advanced to defend past agency action against attack" or if it is "a new interpretation . . . that creates unfair surprise to regulated parties." *Kisor*, 588 U.S. at 579 (noting refusal to defer where an agency interpretation imposed retroactive liability without fair warning); *Boler*, 115 F.4th at 328 (deferring to the Sentencing Commission's fair and considered judgment because it reviewed and refined the guidelines to ensure they aligned with court precedent). This Court has also recognized that it rarely grants *Auer* deference when an agency's view directly conflicts with its prior interpretation. *Id.*

Here, the DOJ guidelines were issued to provide clarity and consistency in implementing both 42 U.S.C. § 12132 and the integration mandate. There is no prior interpretation issued by the DOJ that would conflict with the interpretation. *See* U.S. Dep't of Justice, *Statement of the Department of Justice on the Integration Mandate of Title II of the ADA and Olmstead v. L.C.*, http://www.ada.gov/olmstead/q&a_olmstead.htm (last updated Feb. 25, 2020). Specifically, they

are to serve as a guide that enables both individuals and public entities to better understand the rights and obligations at issue under the ADA. *Id*. By providing a uniform standard, the DOJ resolved inconsistencies among circuit courts, thereby promoting national uniformity and reducing opportunities for forum shopping. *Compare Fisher*, 335 F.3d at 1181–82 (holding that current institutionalization is not a prerequisite to maintain a Title II discrimination claim), *with Mississippi*, 82 F.4th at 392 (holding that a plaintiff must be currently institutionalized).

The guidelines represent the DOJ's fair and considered judgment because they are not a convenient litigating position, not a post hoc rationalization, and do not create unfair surprise for regulated parties. *Kisor*, 588 U.S. at 579. Instead, they reflect the DOJ's longstanding, reasoned view on the integration mandate, providing the clarity Congress intended when delegating regulatory authority to the agency. Moreover, as in *Boler*, 115 F.4th at 328, where the court found the Commission issued guidelines that reflected court precedent, here, the DOJ also issued its interpretive guidelines which align with *Olmstead* precedent. *See* U.S. Dep't of Justice, *Statement of the Department of Justice on the Integration Mandate of Title II of the ADA and Olmstead v. L.C.*, http://www.ada.gov/olmstead/q&a_olmstead.htm (last updated Feb. 25, 2020).

Even if the integration mandate is ambiguous, the DOJ's interpretation satisfies all four *Kisor* factors and warrants *Auer* deference. The guidance is reasonable because it resolves, without expanding, the regulatory gap on whether institutionalization is required; authoritative because it reflects the DOJ's formal and considered position; within the DOJ's substantive expertise as the agency Congress charged with implementing Title II; and consistent with its longstanding view, avoiding any litigating positions, post hoc rationalizations, or unfair surprises. Accordingly, this Court should defer to the DOJ's interpretation and hold that individuals facing a serious risk of institutionalization may maintain claims under Title II.

D. Alternatively, if Title II Is Deemed Ambiguous, the DOJ's Integration Mandate Guidance Warrants Substantial *Skidmor*e Respect Because It Is Thorough, Reasoned, Consistent, and Issued by the Agency Charged with Implementing Title II.

Courts must exercise their own independent judgment when determining the meaning of a statute. *Loper*, 603 U.S. at 394. However, this Court has long recognized that non-binding agency interpretations may still be given respectful consideration based on their persuasive value, even when they are not entitled to controlling deference under *Auer* or *Kisor*. *Skidmore*, 323 U.S. at 140 (1944).

Under *Skidmore*, courts evaluate the weight due to an agency's interpretation based on (1) "the thoroughness evident in [an agency's] consideration," (2) "the validity of [an agency's] reasoning," (3) an agency's "consistency with earlier and later pronouncements," and (4) "all those factors which give [an agency] power to persuade, if lacking the power to control." *Id.*; *see also Olmstead*, 527 U.S. at 598 (applying the *Skidmore* factors). Such weight is appropriate because "rulings, interpretations and opinions . . . do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." *Skidmore*, 323 U.S. at 140. *Skidmore* is a sliding-scale test where the level of weight afforded depends on the analysis of the enumerated factors. *See Hayes v. Harvey*, 903 F.3d 32, 46 (3d Cir. 2018) (holding that the most important considerations are whether the agency's interpretation is consistent with other pronouncements of the agency and whether it aligns with the purpose of the act) (citation omitted). Accordingly, even if this Court declines to apply *Auer* deference to the DOJ's integration mandate guidance, the agency's interpretation warrants substantial *Skidmore* respect because it is thorough, reasoned, consistent, and issued by the agency Congress charged with implementing Title II.

1. Thoroughness Is Met Because the DOJ As a Whole Body Promulgated the Guidance Document, and It Conforms with Other DOJ Pronouncements.

Thoroughness considers the care an agency took in issuing guidelines. *See Skidmore*, 323 U.S. at 140. This factor is met when the agency itself is issuing an interpretation, rather than a staff member who has a more limited function. *See De La Mota v. United States Dep't of Educ.*, 412 F.3d 71, 80 (2d Cir. 2005) (holding that thoroughness was not met because the agency staff member did not report to the Secretary, had no law-making authority, and was not constrained by political accountability). In *Suncor Energy (U.S.A.), Inc. v. United States EPA*, the court found that the Environmental Protection Agency's ("EPA") interpretation lacked thoroughness as it clearly ignored a regulatory definition that the agency previously established for the term "facility." 50 F.4th 1339, 1355 (10th Cir. 2022) (finding that this alone was "sufficient to call into question both the thoroughness and validity of the EPA's" interpretation).

Here, the DOJ's interpretations should be accorded deference because unlike *De La Mota*, 412 F.3d at 80, where the interpretation was not issued by the agency as a whole body, the DOJ's interpretations are adopted by the agency collectively and published on its publicly available website. *See* U.S. Dep't of Justice, *Statement of the Department of Justice on the Integration Mandate of Title II of the ADA and Olmstead v. L.C.*, http://www.ada.gov/olmstead/q&a_olmstead.htm (last updated Feb. 25, 2020). The DOJ recognizes that this document is "a statement of general applicability issued . . . to inform the public of its policies or legal interpretations." *See* U.S. Dep't of Justice, *Principles for Issuance and Use of Guidance Documents*, https://www.justice.gov/jm/1-19000-limitation-issuance-guidance-documents-1 (last updated April 2022). The agency acknowledges that these interpretations are not binding but still are valuable in that they provide the public with information

that is clearer than the underlying regulations and statutes. *Id.* Moreover, unlike in *Suncor*, 50 F.4th at 1355, where the agency's interpretation ignored a previously established regulatory definition for the word "facility," here, the guidance document is consistent with other DOJ pronouncements and definitions. This Court should find that the DOJ guidance document is entitled to *Skidmore* respect because it has been promulgated by the DOJ as a whole agency and encompasses DOJ-established definitions.

2. The DOJ Has Shown the Validity of Its Interpretations Because It Has Demonstrated What Can Be Sufficient Risk of Institutionalization.

Agencies can also show that they have considered the effects of the guidance they are issuing when they offer valid reasoning behind the enforceability of a regulation. *See Coke v. Long Island Care at Home, Ltd.*, 376 F.3d 118, 134 (2d Cir. 2004) (holding that the agency's interpretation was not entitled to *Skidmore* respect because it failed to offer any explanation for two directly contradictory aspects of the regulation). Here, the DOJ has considered the effects of its guidance document because it explains that individuals at risk of institutionalization can bring a Title II claim and provides clarity as to what is a sufficient risk of institutionalization. *See* U.S. Dep't of Justice, *Statement of the Department of Justice on the Integration Mandate of Title II of the ADA and Olmstead v. L.C.*, http://www.ada.gov/olmstead/q&a_olmstead.htm (last updated Feb. 25, 2020). Unlike in *Coke*, 376 F.3d at 134, where there were contradictory regulations that the agency failed to explain, here, the DOJ has provided a reasonable explanation of its interpretation of the integration mandate and specifically addressed how the risk of institutionalization fits within Title II, which makes its guidance deserving of *Skidmore* respect. *See* U.S. Dep't of Justice, *Statement of the Department of Justice on the Integration Mandate of*

Title II of the ADA and Olmstead v. L.C., http://www.ada.gov/olmstead/q&a_olmstead.htm (last updated Feb. 25, 2020).

3. Consistency Is Met Because the DOJ's Interpretation Aligns with Precedent, and the DOJ has Promulgated Regulations Regularly.

Agency interpretations of statutes that are consistent with precedent are also accorded more respect. *Skidmore*, 323 U.S. at 140. In *Coke*, the Seventh Circuit refused to grant *Skidmore* respect to the Department of Labor's ("DOL") position on what is covered by the Fair Labor Standards Act ("FLSA") because the agency issued multiple inconsistent interpretations on the same issue. *See Coke*, 376 F.3d at 134 (discussing how the DOL "proposed a regulation that would have afforded FLSA coverage to employees of third-party employers only to reverse itself with the promulgation of § 552.109(a)."); *see also Young v. UPS*, 575 U.S. 206, 225 (2015) (holding that the agency's interpretation ran counter to this Court's precedent and thus lacked consistency under *Skidmore*). Courts grant deference to agency interpretations when that agency has issued regulations for an extensive period. *See Mayfield v. United States DOL*, 117 F.4th 611, 620 (5th Cir. 2024) (holding that the Department of Labor's interpretation was consistent because it had been routinely issuing minimum salary rules for over eighty years).

Here, the DOJ's guidelines conform with the integration mandate and Title II of the ADA, only further clarifying gaps rather than creating inconsistencies. *See* U.S. Dep't of Justice, *Statement of the Department of Justice on the Integration Mandate of Title II of the ADA and Olmstead v. L.C.*, http://www.ada.gov/olmstead/q&a_olmstead.htm (last updated Feb. 25, 2020). Unlike the interpretation in *Coke*, 376 F.3d at 134, where the same agency issued two different interpretations on the same issue, here, the DOJ has only further effectuated the text found in the integration mandate and Title II. *Id.* (discussing what integrated settings are and whether a plaintiff

must prove facial discrimination to bring an *Olmstead* claim). Moreover, the DOJ interpretations further Congress's purpose in enacting the ADA, which was to broaden protections "for people with developmental disabilities to enjoy the benefits of community living[,]" and align with this Court's precedent set in *Olmstead*. *Olmstead*, 527 U.S. at 599. Like in *Mayfield* , 117 F.4th at 620, where the DOL had been promulgating regulations for eighty years, here, the DOJ also has been issuing regulations for an extensive period of time—since 1991. National Network, *Timeline of the American With Disabilities Act*, https://adata.org/ada-timeline (last updated August 2025). As such, the DOJ guidance document aligns with precedent and should be accorded respect.

In conclusion, this Court should find that Respondents can maintain their Title II claim because the statutes' plain language omits any limitation restricting protection to individuals already institutionalized. The integration mandate also reinforces this broader reading, and the DOJ's consistent guidance confirms that its protections extend to those facing the risk of institutionalization. Moreover, even if this Court finds ambiguity in the integration mandate, the DOJ's interpretation should control under the *Auer* and *Kisor* frameworks because it is reasonable, reflects the DOJ's expertise, represents its authoritative and considered judgment, and is consistent with its developed position. Alternatively, even if *Auer* deference does not apply, the DOJ's interpretation warrants *Skidmore* respect because it is thorough, well-reasoned, consistent with prior pronouncements, and issued by the agency Congress expressly charged with effectuating Title II. In granting *Skidmore* deference, this Court should use the DOJ guidance document to find that Respondents can maintain a claim under Title II of the ADA without being currently institutionalized. Thus, because there exists a legally recognized claim, this Court should affirm the Twelfth Circuit's judgment.

II. THE TWELFTH CIRCUIT'S DECISION ALLOWING THE UNITED STATES TO ENFORCE TITLE II AND INTERVENE AS OF RIGHT SHOULD BE AFFIRMED BECAUSE THE DOJ HAS A STATUTORY INTEREST UNDER RULE 24(a)(2) AND SATISFIES EACH ELEMENT FOR INTERVENTION AS OF RIGHT.

Courts must permit a party to intervene when the party either (1) "is given an unconditional right to intervene by a federal statute" or (2) "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may . . . impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(1)–(2). As Title II of the ADA does not provide the United States with an unconditional right to intervene in private suits, the government seeks intervention as of right under Rule 24(a)(2). R. at 2; *see also* 42 U.S.C. § 12101 *et seq.* Here, the United States adequately fulfills all requirements of Rule 24(a)(2).

To intervene under Rule 24(a)(2), the movant must demonstrate the following factors: "(1) timely application; (2) an interest relating to the subject matter of the action; (3) potential impairment, as a practical matter, of that interest by the disposition of the action; and (4) lack of adequate representation of the interest by the existing parties to the action." *Illinois v. City of Chi.*, 912 F.3d 979, 984 (7th Cir. 2019) (quoting *Shea v. Angulo*, 19 F.3d 343, 346 (7th Cir. 1994)). Courts apply this rule broadly and grant intervention "unless it appears to a certainty that the intervenor is not entitled to relief under any set of facts which could be proved under the complaint." *Illinois*, 912 F.3d at 984 (quoting *Reich v. ABC/York-Estes Corp.*, 64 F.3d 316, 321 (7th Cir. 1995)).

Courts review decisions to grant or deny intervention as of right under an abuse of discretion standard. *See NAACP v. New York*, 413 U.S. 345 (1973); *Int'l Paper Co. v. Jay*, 887

F.2d 338 (1st Cir. 1989); *Am. Lung Ass'n v. Reilly*, 962 F.2d 258 (2d Cir. 1992); *Brody v. Spang*, 957 F.2d 1108 (3d Cir. 1992); *In re Sierra Club*, 945 F.2d 776 (4th Cir. 1991). A court abuses its discretion when deciding whether to allow intervention as of right only if it applies an incorrect legal standard or reached a decision that is clearly incorrect. *Brody*, 957 F.2d at 1115. Abuse of discretion is the proper standard here because the district judge best understands the facts of the case and can most accurately judge the advantages and disadvantages of the proposed intervention. *Am. Lung Ass'n*, 962 F.2d at 261.

As this Court granted certiorari solely on the question of whether the United States may "file a lawsuit to enforce Title II . . . and thus has an interest relating to the subject matter" under Rule 24 (a)(2), this argument addresses factor two first, as it is the primary issue in dispute. R. at 39. The remaining considerations concerning timeliness, adequacy of representation, and potential impairment are less contested because the lower courts applied the correct legal standards and reached conclusions which are not clearly incorrect. *See* R. at 3–9, 26–28.[5] In this case, the United States has a substantial interest in the private plaintiffs' litigation based upon its interest in ensuring the proper enforcement of its statutes and its authority to bring lawsuits to enforce Title II.

A. The United States' Interest in Properly Enforcing the ADA Satisfies Factor Two of Rule 24(a)(2) and Is Also Supported by Congress's Express Grant of Federal Enforcement Authority.

Factor two of Rule 24(a)(2) is satisfied on two independent grounds: the United States' interest in properly enforcing the ADA establishes the required stake in this litigation, and, even

[5] In the alternative, the United States may permissively intervene in this action. *See* Fed. R. Civ. P. 24(b). Because the lower courts decided in the United States' favor on the question of intervention as of right, they never decided whether the United States may permissively intervene. *See* R. at 34. Permissive intervention is therefore not ripe for review and is not discussed further in this brief. *Id.* Should this Court rule in favor of Petitioner, the case should be remanded to resolve the question of permissive intervention.

if a cause of action were necessary, Congress expressly granted federal enforcement authority under 42 U.S.C. § 12133.

1. The United States May Intervene Without Possessing an Independent Cause of Action Because Its Interest in Enforcing ADA Protections Satisfies Rule 24(a)(2).

An intervenor need not have an independent cause of action to intervene as of right; they must only demonstrate a direct interest in the litigation. *See Trbovich v. UMW*, 404 U.S. 528, 529 (1972) (holding that a lack of a cause of action does not bar intervention under Rule 24(a)(2), even when a statute prohibits the party from filing its own suit). A substantial interest requires a "direct, substantial, [and] legally protectable interest in the proceedings." *La Union del Pueblo Entero v. Abbott*, 29 F.4th 299, 305 (5th Cir. 2022) (finding the second factor satisfied where the intervenor invested significant resources in recruiting and training to advance the very objectives pursued in the litigation) (citation omitted). States have a legitimate interest in ensuring the continued enforcement of their own statutes for the purposes of Rule 24(a)(2). *Berger v. N.C. State Conference of the NAACP*, 597 U.S. 179, 191 (2022).

Here, the United States' enforcement of a governing statute constitutes precisely the type of substantial interest Rule 24(a)(2) protects. *See Maine v. Taylor*, 477 U.S. 131, 137 (1986) (holding that a "state clearly has a legitimate interest in the continued enforceability of its own statutes"). Like *La Union*, the United States has expended significant resources to prevent discrimination under Title II and, by intervening in this case, seeks to ensure that the ADA is enforced to the full extent Congress intended—namely, that plaintiffs who are not currently institutionalized but face a substantial risk of future institutionalization are protected by Title II. *See infra* Part II.A.2; U.S. Comm'n on Civil Rights, *The Americans with Disabilities Act: Title II*

Regulations, https://www.usccr.gov/files/pubs/ada/ch2.htm (last visited Sept. 8, 2025) (detailing the DOJ's extensive enforcement responsibilities under Title II, which require significant federal resources); U.S. Dep't of Justice, *Fiscal Year 2026 Budget Performance Summary*, https://www.justice.gov/media/1403736/dl, at 85 (last visited Sept. 8, 2025) (requesting $107.4 million for the 2026 fiscal year to fund the DOJ's Civil Rights Division legal activities, which includes ADA enforcement proceedings). Thus, the United States has a substantial and legitimate interest in ensuring that the full scope of the ADA is enforceable through court intervention.

2. Even If a Cause of Action Were Required, Congress Expressly Granted the United States Federal Enforcement Authority Under 42 U.S.C. § 12133 Pursuant to the Statute's Plain Language, Congressional Intent, and Public Policy.

Whether the United States has "an interest relating to the subject matter of the action" can be correlated with its authority to bring enforcement actions under Title II. Fed. R. Civ. P. 24(a). If the Attorney General is empowered to enforce the statute, then the Government's interest in this case is uncontested because it seeks to uphold federal law and protect individuals' rights. *See, e.g.*, *Berger*, 597 U.S. at 191 (explaining that states have a legitimate interest in ensuring the continued enforcement of their own statutes for the purposes of Rule 24(a)(2)). The plain language of Title II, Congress's express purpose in enacting the ADA, and public policy considerations all demonstrate that the United States has authority to bring enforcement actions under Title II.

Numerous courts have recognized this authority, concluding that the Attorney General may initiate litigation to enforce the statute. *See, e.g.*, *United States v. Florida*, 938 F.3d 1221, 1248 (11th Cir. 2019) (holding that Congress's adoption of Title VI's enforcement mechanism for Title II empowers the Attorney General to enforce Title II "by any other means authorized by law,"

including initiating civil actions); *United States v. City & Cty. of Denver*, 927 F. Supp. 1396, 1400 (D. Colo. 1996) ("United States has authority to initiate action under both Titles I and II of the ADA to enforce the provisions of the Act, independent of any private suit."); *Smith v. City of Phila.*, 345 F. Supp. 2d 482, 490 (E.D. Pa. 2004) (same).

a) The Plain Language of 42 U.S.C. § 12133 Confirms That the United States Has Authority to Enforce Title II by Incorporating the Remedies Provided in Section 505 of the Rehabilitation Act.

The starting point for any question of statutory interpretation is the statute's plain language. *See Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992) (stating that "courts must presume that a legislature says in a statute what it means and means in a statute what it says"). By expressly stating that "[t]he remedies, procedures, and rights set forth in section 794a of title 29 *shall be* the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability[,]" Congress incorporated the Rehabilitation Act's enforcement mechanisms with Title II in full, thereby affirming the United States' authority to pursue civil actions and enforce the statute. 42 U.S.C. § 12133 (emphasis added); *see also id.* § 12134(b) ("With respect to 'program accessibility, existing facilities', and 'communications', such regulations shall be consistent with . . . part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under section (of title 29.").

Section 505 of the Rehabilitation Act ("Rehabilitation Act") in turn adopts by cross-reference the remedial framework of Title VI of the Civil Rights Act ("Civil Rights Act"). *See* 29 U.S.C § 794(a); 42 U.S.C. § 2000d-1. As a result, the full system of remedial procedures and subsequently court enforcement mechanisms available under the Civil Rights Act applies with equal force to both the Rehabilitation Act and Title II. *See United States v. Florida*, 938 F.3d at 1248 (finding that the Rehabilitation Act incorporates from the Civil Rights Act "a system of

administrative procedures that included a complaint, compliance reviews, investigation, and *possible enforcement action by the Attorney General . . .*" and applying the same framework to Title II) (emphasis added).

This is further reinforced by the fact that the enforcement framework established under the Civil Rights Act and incorporated into the Rehabilitation Act was "well-established" when Congress enacted the ADA, including Title II. *Id*. And because "Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law," *Lorillard v. Pons*, 434 U.S. 575, 581 (1978), this Court should presume that Congress understood the Government's authority to enforce Section 505 and intentionally incorporated that authority into Title II. *See United States v. Florida*, 938 F.3d at 1242 ("If Congress *only* intended to create a private right of action under Title II, then its decision to cross-reference to § 505 of the Rehabilitation Act … would be mystifying.") (emphasis in original); *see also* 73 Am Jur 2d Statutes § 83, (2025) (stating that after a statute is enacted, it should be interpreted and read in connection with the whole body of law). A full understanding of the scope of the Government's enforcement authority under Title II turns on the remedial framework established in the Civil Rights Act.

Under the Civil Rights Act, federal agencies may enforce the Act's prohibitions on discrimination for any program receiving federal funding by terminating the program's funding "or by any other means authorized by law." 42 U.S.C. § 2000d-1. Congress further directed these agencies to draft regulations to implement the Act's enforcement scheme. *Id.* Such regulations are presumed valid unless they are not related to the purposes of enabling legislation. *Mourning v. Family Publ'ns Serv.*, 411 U.S. 356, 369 (1973).

The DOJ promulgated enforcement regulations under this directive, authorizing the agency—after determining that it could not obtain voluntary compliance—to induce compliance by "any other means authorized by law" including "appropriate proceedings brought by the Department[.]" 28 C.F.R. § 42.108 (2003). Such proceedings include court enforcement and permit the "initiation of, or intervention or other participation in, a suit for other relief designed to secure compliance." *Id.* § 50.3 (1966); *see also United States v. Baylor Univ. Med. Ctr.*, 736 F.2d 1039, 1050 (5th Cir. 1984) (stating that "other means authorized by law" permits agencies to sue in federal court to enforce Section 504 of the Rehabilitation Act); *United States v. Miami Univ.*, 294 F.3d 797, 808 (6th Cir. 2002) (stating that "other means authorized by law" as used in the Family Education Rights and Privacy Act "expressly" permits enforcement in court by the Government).

Returning to the cross-references among the Rehabilitation Act, the Civil Rights Act, and Title II, courts have consistently permitted the application of the Civil Rights Act's judicial enforcement remedies to the Rehabilitation Act. *See United States v. Bd. of Trustees for Univ. of Ala.*, 908 F.2d 740 (11th Cir. 1990) (action brought by the United States to enforce the Rehabilitation Act on behalf of a private party); *United States v. Univ. Hosp. of State Univ. of N.Y. at Stony Brook*, 729 F.2d 144 (2d Cir. 1984) (same); *Baylor Univ. Med. Ctr.*, 736 F.2d 1039 (same). The Eleventh Circuit has further upheld that Title II incorporates these same remedies. *See United States v. Florida*, 938 F.3d at 1248 (holding that the Federal Government possesses the same court enforcement authority under Title II as it does under the Rehabilitation Act). Accordingly, this Court should follow the reasoning of prior courts and hold that Title II, like the Rehabilitation Act, authorizes federal judicial enforcement. The DOJ's regulations simply implement the enforcement

framework established by Congress and do not confer any authority beyond what the statute provides.

Dissenting from the Twelfth Circuit's opinion, Judge Hoffman erroneously argued that because the statute provides remedies "to any person alleging discrimination on the basis of disability," the United States does not qualify as a "person" and therefore lacks authority to bring suit to enforce Title II in the same manner as a private plaintiff. 42 U.S.C. § 12133; *see also* R. at 31 (Hoffman, C.J., dissenting). This argument misreads both the statutory text and the Attorney General's role under Title II. The "person" referenced in § 12133 is the individual who claims to have suffered discrimination, not the Attorney General. Acting in a representative capacity to vindicate individual rights, the Attorney General may initiate litigation on that person's behalf. *See United States v. Sec'y Fla. Agency for Health Care Admin.*, 21 F.4th 730, 733 (11th Cir. 2021) ("Because the Attorney General brings this lawsuit on behalf of a person alleging discrimination, the dissental's . . . arguments about why the Attorney General does not qualify as a 'person' under § 12133 miss the mark entirely.").

As the Twelfth Circuit correctly held, the plain language of § 12133 authorizes the United States to file lawsuits to enforce Title II on behalf of people alleging discrimination.

b) Recognizing the United States' Authority to Enforce Title II Aligns with Congress's Intent in Enacting § 12133 and Furthers the Broad Purposes of the ADA.

Courts determine a statute's intended meaning by examining its language in the broader context of the statutory scheme and objectives Congress sought to achieve. *Robinson*, 519 U.S. at 341; *see also Fischer v. United States*, 603 U.S. 480, 486 (2024). Here, the statutory context of 42 U.S.C. § 12133 demonstrates that Congress intended the United States to play an active role in enforcing Title II, including through civil litigation.

First, Congress's intent is evident from its decision to adopt the Rehabilitation Act's enforcement framework rather than creating a new scheme for Title II. As the Eleventh Circuit explained, "[t]he consistency requirement in § 12134(b) leads to the conclusion that Congress intended the Attorney General's Title II regulations to adopt the Rehabilitation Act's Title-VI-type enforcement procedures because Title II's enforcement procedure used the Rehabilitation Act's enforcement structure." *Florida*, 938 F.3d at 1241. These procedures authorize the government to enforce Title II by filing lawsuits on behalf of private parties. *Id.* at 1250. This conclusion is further confirmed by the regulations authorized under 42 U.S.C. § 12134, which expressly directs the Attorney General to issue regulations implementing Title II's enforcement scheme consistent with the Rehabilitation Act's framework. *See* 28 C.F.R. § 35.174 (2010) (providing that when voluntary compliance cannot be achieved, "the designated agency shall refer the matter to the Attorney General with a recommendation for appropriate action").

Second, Congress codified this intent in the statute itself, declaring that one purpose of the ADA is "to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter *on behalf of individuals* with disabilities." 42 U.S.C. § 12101(b)(3) (emphasis added). Denying the United States the ability to bring enforcement actions under Title II would undermine this "central role" and directly conflict with Congress's express intent. *See id.* § 12101(b)(3)–(4).

Finally, the ADA's pre-enactment legislative history reinforces this intent. The Senate Committee on Labor and Human Resources stated that "[i]t is the Committee's intent that enforcement of section 202 of the legislation should closely parallel the Federal government's experience with section 504 of the Rehabilitation Act of 1973." S. Rep. No. 101-116, at 52 (1989). The report explained that federal agencies could refer matters to the DOJ, which "may then proceed

to file suits in Federal district court." *Id.* The House Committee on Education and Labor reached the same conclusion. In nearly identical language, the Committee explained that federal agencies would enforce Title II via referral to the Department of Justice, who "may then proceed to file suits in Federal district court." H.R. Rep. No. 101-485, pt. 2, at 98 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 381.

Taken together, the statutory structure, Congress's express statements, and the ADA's legislative history demonstrate a clear consensus: Congress intended the United States to play an active role in enforcing Title II, including through civil litigation initiated by the DOJ.

c) Interpreting Title II to Permit Government Enforcement Advances Public Policy by Protecting Vulnerable Individuals and Promoting Significant Cost Savings.

Permitting the federal government to enforce Title II on behalf of private parties furthers the ADA's purpose by ensuring that the rights of all individuals with disabilities are fully protected, rather than relying on the more limited relief often sought by private plaintiffs. R. at 24 The Twelfth Circuit reached the same conclusion, noting that the United States' complaint correctly requests injunctive relief for all those in Franklin who are at risk" and "not just relief for the three Appellees." *Id.*

Congress recognized that discrimination "denies people with disabilities the opportunity to compete on an equal basis . . . and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity." 42 U.S.C. § 12101(a)(8). Accordingly, one of the ADA's central purposes is "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities," 42 U.S.C. § 12101(b)(1). By doing so, Congress sought to protect the interests of people with disabilities while simultaneously providing the nation with the benefits that flow from their increased productivity. *Cleveland v. Policy Mgmt. Sys. Corp.*, 526 U.S. 795, 801 (1999).

Federal enforcement is necessary to achieve these goals. Congress found that discrimination "persists in such critical areas as employment, housing, public accommodations," 42 U.S.C. § 12101(a)(3), and deliberately provided for federal enforcement across the ADA: Title I through 42 U.S.C. § 12117, Title II through § 12133, and Title III through § 12188. Allowing the DOJ to litigate where necessary ensures a uniform application of the law and maximizes the statute's intended impact. Contrary to the concern that recognizing the DOJ's role would create "a de facto right of the United States to intervene in any case involving any regulation drafted by any federal agency," *see* R. at 32 (Hoffman, C. J., dissenting), the government asserts no such blanket right. Instead, the United States claims enforcement power only where Congress has expressly granted the DOJ enforcement authority.

The plain language of Title II, Congress's intent, and the ADA's purpose establish that the United States has authority to enforce Title II through litigation. By incorporating the Rehabilitation Act's enforcement framework, Congress empowered the DOJ to uphold federal law and protect individuals with disabilities. This Court should hold that the United States has a substantial interest in this action under Rule 24(a)(2).

B. The United States Satisfies the Remaining Factors Because It Timely Moved to Intervene, Its Absence Would Impair Those Interests, and Private Plaintiffs Cannot Adequately Represent Its Broader Institutional Interests.

The remaining factors for Rule 24(a)(2) are each satisfied. The United States' intervention was timely, its limited delay in filing its motion to intervene did not prejudice existing parties, and the existing parties in the case do not adequately represent the broad interests of the Federal Government.

1. The United States' Motion to Intervene Was Timely Because It Acted Promptly Upon Learning of Its Interest, Caused No Prejudice to the Original Parties, and Would Be Prejudiced if Intervention Were Denied.

Courts weigh four criteria to determine whether a motion to intervene is timely: "(1) the length of time the intervenor knew or should have known of his interest in the case; (2) the prejudice caused to the original parties by the delay; (3) the prejudice to the intervenor if the motion is denied; [and] (4) any other unusual circumstances." *Grochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 797–98 (7th Cir. 2013) (quoting *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 949 (7th Cir. 2000)).

The United States became aware of its interest in this case "in early May of 2022" when it concluded its investigation into the State of Franklin Department of Social and Health Services and found the private plaintiff's claims substantiated. R. at 2, 4. Only weeks later, on May 27, 2022, the Government filed its motion to intervene. *Id.* Courts regularly find intervention timely when it is filed within weeks of discovering the relevant interest. *See Ford v. City of Huntsville*, 242 F.3d 235, 240–41 (5th Cir. 2001) (starting the clock when the intervenor learns of their interest and finding that filing within one month reflects a quick fulfilment of the duty to act) (citing *Stallworth v. Monsanto Co.*, 558 F.2d 257, 267 (5th Cir. 1977)).

The second criterion also favors timeliness. Although there was a slight modification to the District Court's scheduling order, there is no indication the United States' short delay in filing caused any prejudice to the original parties. *See* R. at 4 (noting that the "case is at an early phase[,]" the "delay is not prejudicial[,]" and even benefits Petitioners as it "is likely to save [their] time"); *see also Ford*, 242 F.3d at 240 (finding timeliness as "no apparent prejudice to the original parties resulted . . . and no such prejudice was alleged").

The third criterion—potential prejudice to the United States if denied intervention—is "largely neutral" because while the government could bring a separate action, efficiency favors participation in the existing litigation. R. at 4. Finally, the fourth criterion need not be considered as there are no unusual circumstances weighing against intervention. *See* R. at 5; *see also Ford*, 242 F.3d at 240 (declining to consider the fourth criterion where there were no unusual circumstances).

Because the first two criteria establish that the Government acted promptly and caused no prejudice, the United States' motion to intervene was timely under Rule 24(a)(2). *See Stallworth*, 558 F.2d at 267 (holding that where other factors strongly support timeliness, neutral factors need not be given significant weight).

2. The United States' Interest Would Be Impaired if Denied Intervention Because an Adverse Ruling Could Limit Its Authority to Enforce Title II.

An adverse ruling in this case could restrict the United States' ability to enforce Title II on behalf of individuals at risk of institutionalization and segregation, thereby impairing its substantial legal interests. To satisfy this element, a proposed intervenor "must show only that impairment of its substantial legal interest is possible if intervention is denied. This burden is minimal." *Grutter v. Bollinger*, 188 F.3d 394, 399 (6th Cir. 1999) (quoting *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997)). Where a judicial decision could strip an intervenor of a potential cause of action in future litigation, the disposition of the action could materially impair the intervenor's interest. *See Wineries of the Old Mission Peninsula Ass'n v. Twp. of Peninsula*, 41 F.4th 767, 774 (6th Cir. 2022).

In *Ne. Ohio Coal. for the Homeless v. Blackwell*, the Sixth Circuit held that Ohio satisfied the potential-impairment requirement when it intervened to defend the validity of its voter ID law,

reasoning that an adverse ruling could preclude the state from enforcing the statute in future litigation. 467 F.3d 999, 1007–08 (6th Cir. 2006). The same principle of stare decisis applies when federal enforcement authority is at stake. *See also Wineries*, 41 F.4th at 774 (holding that potential nullification of zoning ordinances impaired intervenors' interests where it would prevent future enforcement).

Here, denying the United States intervention would similarly risk foreclosing its ability to enforce Title II in future cases, undermining Congress's express directive that the DOJ ensure compliance with the ADA. *See* 42 U.S.C. § 12101(b)(3). If this Court were to adopt Petitioners' narrow reading of Title II, stare decisis could bind the United States in subsequent cases, preventing it from bringing systemic enforcement actions on behalf of individuals at risk of unnecessary institutionalization. The Twelfth Circuit correctly recognized this risk, explaining that factor three is interrelated with factor two: if the United States has an interest in enforcing Title II, "that interest would surely be impaired if it could not participate in the lawsuit." R. at 26.

Because an adverse ruling would restrict the United States' ability to enforce Title II and bind it under stare decisis, the government has met its minimal burden and established potential impairment of interest under Rule 24(a)(2).

3. The Original Plaintiffs Cannot Adequately Represent the United States' Interests Because They Seek Narrower, More Individualized Relief Than the Systemic Remedies Pursued by the Government.

Under Rule 24(a)(2), the burden to show inadequate representation is "minimal." *Wineries*, 41 F.4th at 774; *see also In re Sierra Club*, 945 F.2d 776, 779 (4th Cir. 1991) (holding the requirement satisfied "if it is shown that representation of its interest '*may be*' inadequate") (quoting *United Guar. Residential Ins. Co. v. Phila. Sav. Fund Soc'y*, 819 F.2d 473, 475 (4th Cir.

1987)). Divergent litigation objectives are sufficient to establish inadequacy. *Sierra Club*, 945 F.2d at 780 (finding divergent litigation objectives, and therefore inadequate representation, when one party, as an agency, "represent[ed] all citizens of the state" while the other, as a club, represented "only a subset of citizens").

Like *Sierra Club*, while the private Petitioners here seek relief for their individual claims, the United States' role under the ADA extends beyond this case: it enforces a national mandate to protect all individuals facing unnecessary institutionalization and segregation. *See* 42 U.S.C. § 12101(b)(1) (stating that the ADA's purpose is to "provide a clear and comprehensive *national* mandate for the elimination of discrimination against individuals with disabilities.") (emphasis added). As the District Court and Twelfth Circuit recognized, the Government seeks broader, systemic remedies than the Petitioners, thereby fulfilling factor four under Rule 24(a)(2). R. at 8, 28.

Because the United States acted promptly in seeking intervention, faces potential impairment of its enforcement authority if excluded, and pursues broader institutional interests than the private plaintiffs, it satisfies the remaining Rule 24(a)(2) factors.

In conclusion, the United States satisfies the interest requirement of Rule 24(a)(2) on two independent bases. First, the United States has a legitimate interest in the proper enforcement of its own statutes. Second, Title II grants the United States enforcement authority by incorporating the remedies available under the Rehabilitation Act and the Civil Rights Act. The remaining requirements of Rule 24(a)(2) are met because the United States' intervention was timely, its interests would be impaired if the motion to intervene was denied, and the existing parties in the lawsuit cannot adequately represent the United States' interests. This Court should therefore affirm

the judgment of the Twelfth Circuit and hold that the United States' intervention as of right was properly granted.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court affirm the Twelfth Circuit Court of Appeals' decision.

Respectfully Submitted,

/s/_____

Team 3421

Counsel for Respondents

APPENDIX A

42 U.S.C. §§ 12101–12188

§ 12101. Findings and Purpose

(a) Findings. The Congress finds that—

(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(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;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

* * * *

(7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose. It is the purpose of this Act—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

§ 12117. Enforcement

(a) Powers, remedies, and procedures.

The powers, remedies, and procedures set forth in sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9) shall be the powers, remedies, and procedures this title provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this Act, or regulations promulgated under section 106 [42 USCS § 12116], concerning employment.

(b) Coordination.

The agencies with enforcement authority for actions which allege employment discrimination under this title and under the Rehabilitation Act of 1973 shall develop procedures to ensure that administrative complaints filed under this title and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or

conflicting standards for the same requirements under this title and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this title and Rehabilitation Act of 1973 not later than 18 months after the date of enactment of this Act [enacted July 26, 1990].

§ 12131. Definition

As used in this title:

(1) Public entity. The term "public entity" means—

(A) any State or local government;

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act [49 USCS § 24102(4)].

(2) Qualified individual with a disability. The term "qualified individual with a disability" means 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.

§ 12132. Discrimination

Subject to the provisions of this title, 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.

§ 12133. Enforcement

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 USCS § 12132].

§ 12134. Regulations

(a) In general. Not later than 1 year after the date of enactment of this Act [enacted July 26, 1990], the Attorney General shall promulgate regulations in an accessible format that implement this subtitle. Such regulations shall not include any matter within the scope of the authority of the Secretary of Transportation under section 223, 229, or 244 [42 USCS § 12143, 12149, or 12164].

(b) Relationship to other regulations. Except for "program accessibility, existing facilities", and "communications", regulations under subsection (a) shall be consistent with this Act and with the coordination regulations under part 41 of title 28, Code of Federal Regulations (as promulgated by the Department of Health, Education, and Welfare on January 13, 1978), applicable to recipients of Federal financial assistance under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). With respect to "program accessibility, existing facilities", and "communications", such regulations shall be consistent with regulations and analysis as in part 39 of title 28 of the Code of Federal Regulations, applicable to federally conducted activities under such section 504.

(c) Standards. Regulations under subsection (a) shall include standards applicable to facilities and vehicles covered by this subtitle, other than facilities, stations, rail passenger cars, and vehicles

covered by subtitle B. Such standards shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504(a) of this Act [42 USCS § 12204(a)].

§ 12188. Enforcement

(a) In general.

(1) Availability of remedies and procedures. The remedies and procedures set forth in section 204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000a-3(a)) are the remedies and procedures this title [42 USCS §§ 12181 et seq.] provides to any person who is being subjected to discrimination on the basis of disability in violation of this title [42 USCS §§ 12181 et seq.] or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 303 [42 USCS § 12183]. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title [42 USCS §§ 12181 et seq.] does not intend to comply with its provisions.

(2) Injunctive relief. In the case of violations of sections 302(b)(2)(A)(iv) and [section] 303(a) [42 USCS §§ 12182(b)(2)(A)(iv) and 12183(a)], injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities to the extent required by this title [42 USCS §§ 12181 et seq.]. Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title [42 USCS §§ 12181 et seq.].

(b) Enforcement by the Attorney General.

(1) Denial of rights.

(A) Duty to investigate.

(i) In general. The Attorney General shall investigate alleged violations of this title [42 USCS §§ 12181 et seq.], and shall undertake periodic reviews of compliance of covered entities under this title [42 USCS §§ 12181 et seq.].

(ii) Attorney General certification. On the application of a State or local government, the Attorney General may, in consultation with the Architectural and Transportation Barriers Compliance Board, and after prior notice and a public hearing at which persons, including individuals with disabilities, are provided an opportunity to testify against such certification, certify that a State law or local building code or similar ordinance that establishes accessibility requirements meets or exceeds the minimum requirements of this Act for the accessibility and usability of covered facilities under this title [42 USCS §§ 12181 et seq.]. At any enforcement proceeding under this section, such certification by the Attorney General shall be rebuttable evidence that such State law or local ordinance does meet or exceed the minimum requirements of this Act.

(B) Potential violation. If the Attorney General has reasonable cause to believe that—

(i) any person or group of persons is engaged in a pattern or practice of discrimination under this title [42 USCS §§ 12181 et seq.]; or

(ii) any person or group of persons has been discriminated against under this title [42 USCS §§ 12181 et seq.] and such discrimination raises an issue

of general public importance, the Attorney General may commence a civil action in any appropriate United States district court.

(2) Authority of court. In a civil action under paragraph (1)(B), the court—

(A) may grant any equitable relief that such court considers to be appropriate, including, to the extent required by this title [42 USCS §§ 12181 et seq.]—

(i) granting temporary, preliminary, or permanent relief;

(ii) providing an auxiliary aid or service, modification of policy, practice, or procedure, or alternative method; and

(iii) making facilities readily accessible to and usable by individuals with disabilities;

(B) may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved when requested by the Attorney General; and

(C) may, to vindicate the public interest, assess a civil penalty against the entity in an amount—

(i) not exceeding $50,000 for a first violation; and

(ii) not exceeding $100,000 for any subsequent violation.

(3) Single violation. For purposes of paragraph (2)(C), in determining whether a first or subsequent violation has occurred, a determination in a single action, by judgment or settlement, that the covered entity has engaged in more than one discriminatory act shall be counted as a single violation.

(4) Punitive damages. For purposes of subsection (b)(2)(B), the term "monetary damages" and "such other relief" does not include punitive damages.

(5) Judicial consideration. In a civil action under paragraph (1)(B), the court, when considering what amount of civil penalty, if any, is appropriate, shall give consideration to any good faith effort or attempt to comply with this Act by the entity. In evaluating good faith, the court shall consider, among other factors it deems relevant, whether the entity could have reasonably anticipated the need for an appropriate type of auxiliary aid needed to accommodate the unique needs of a particular individual with a disability.

APPENDIX B

29 U.S.C. § 794

(a) Promulgation of rules and regulations. No otherwise qualified individual with a disability in the United States, as defined in section 7(20) [29 USCS § 705(20)], shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

APPENDIX C

42 U.S.C. § 2000d-1

§ 2000d-1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 [42 USCS § 2000d] with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate

having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

APPENDIX D

28 C.F.R. § 35.130–35.174

§ 35.130. The Regulations to Implement General Prohibitions Against Discrimination

(a) No qualified individual with a disability shall, on the basis of 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 public entity.

(b)

(1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability —

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that

discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;

(vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

(vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration:

(i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;

(ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or

(iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State.

(4) A public entity may not, in determining the site or location of a facility, make selections —

(i) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or

(ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.

(5) A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) A public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part.

(7)

(i) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

(ii) A public entity is not required to provide a reasonable modification to an individual who meets the definition of "disability" solely under the "regarded as" prong of the definition of "disability" at § 35.108(a)(1)(iii).

(8) A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.

(c) Nothing in this part prohibits a public entity from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by this part.

(d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e)

(1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the ADA or this part which such individual chooses not to accept.

(2) Nothing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

(f) A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.

(g) A public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(h) A public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the public entity must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

(i) Nothing in this part shall provide the basis for a claim that an individual without a disability was subject to discrimination because of a lack of disability, including a claim that an individual with a disability was granted a reasonable modification that was denied to an individual without a disability.

Appendix B to Part 35. Guidance on ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services Originally Published July 26, 1991

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Paragraphs (d) and (e), previously referred to in the discussion of paragraph (b)(1)(iv), provide that the public entity must administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities, *i.e.,* in a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible, and that persons with disabilities must be provided the option of declining to accept a particular accommodation.

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§ 35.174. Referral

If the public entity declines to enter into voluntary compliance negotiations or if negotiations are unsuccessful, the designated agency shall refer the matter to the Attorney General with a recommendation for appropriate action.

APPENDIX E

28 C.F.R. § 41.51

The Regulations to Implement Section 504 of the Rehabilitation Act, 28 C.F.R. § 41.51 (1998).

§ 41.51 General prohibitions against discrimination.

* * * *

(d) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

28 C.F.R. § 42.108 (2003). Procedure for Effecting Compliance with Title VI of the Civil Rights Act

(a) General. If there appears to be a failure or threatened failure to comply with this subpart and if the noncompliance or threatened noncompliance cannot be corrected by informal means, the responsible Department official may suspend or terminate, or refuse to grant or continue, Federal financial assistance, or use any other means authorized by law, to induce compliance with this subpart. Such other means include, but are not limited to: (1) Appropriate proceedings brought by the Department to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) Noncompliance with assurance requirement. If an applicant or recipient fails or refuses to furnish an assurance required under § 42.105, or fails or refuses to comply with the provisions of the assurance it has furnished, or otherwise fails or refuses to comply with any requirement imposed by or pursuant to title VI or this subpart, Federal financial assistance may be suspended, terminated, or refused in accordance with the procedures of title VI and this subpart. The

Department shall not be required to provide assistance in such a case during the pendency of administrative proceedings under this subpart, except that the Department will continue assistance during the pendency of such proceedings whenever such assistance is due and payable pursuant to a final commitment made or an application finally approved prior to the effective date of this subpart.

(c) Termination of or refusal to grant or to continue Federal financial assistance. No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until: (1) The responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this subpart, (3) the action has been approved by the Attorney General pursuant to § 42.110, and (4) the expiration of 30 days after the Attorney General has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) Other means authorized by law. No action to effect compliance by any other means authorized by law shall be taken until: (1) The responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the

Attorney General, and (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance.

28 C.F.R. § 50.3 (1966). Guidelines for the Enforcement of Title VI, Civil Rights Act of 1964.

(a) Where the heads of agencies having responsibilities under title VI of the Civil Rights Act of 1964 conclude there is noncompliance with regulations issued under that title, several alternative courses of action are open. In each case, the objective should be to secure prompt and full compliance so that needed Federal assistance may commence or continue.

(b) Primary responsibility for prompt and vigorous enforcement of title VI rests with the head of each department and agency administering programs of Federal financial assistance. Title VI itself and relevant Presidential directives preserve in each agency the authority and the duty to select, from among the available sanctions, the methods best designed to secure compliance in individual cases. The decision to terminate or refuse assistance is to be made by the agency head or his designated representative.

(c) This statement is intended to provide procedural guidance to the responsible department and agency officials in exercising their statutory discretion and in selecting, for each noncompliance situation, a course of action that fully conforms to the letter and spirit of section 602 of the Act and to the implementing regulations promulgated thereunder.