IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

JACOB B. and AMELIA M. by their next friend Ramona Fernandez; JOSEPH S. by his next friend Charles Cusimano; ALAN W. and JACKSON J. by their next friend Hector Linares; CARTER P. and MIKAELA S. by their next friend Steven Scheckman; JUSTINE S. by her next friend Bert Babington; KATRINA R. by her next friend Claris Smith, individually and on behalf of all others similarly situated, ***Plaintiffs,*** **V.** **LOUISIANA DEPARTMENT OF CHILDREN AND FAMILY SERVICES, DAVID N. MATLOCK in his official capacity as the Secretary of the Louisiana Department of Children and Family Services, and JEFFREY LANDRY in his official capacity as the Governor of Louisiana,** ***Defendants.***	**CIVIL ACTION NO.: 24-CV-289** **JUDGE: BRIAN A. JACKSON** **MAGISTRATE: SCOTT D. JOHNSON**

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

The United States of America respectfully submits this Statement of Interest in accordance with 28 U.S.C. § 517[1] to provide its views regarding Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132, and Section 504 of the Rehabilitation Act (Section 504), 29 U.S.C. § 794, as interpreted by the Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581 (1999).

[1] The Attorney General is authorized to "attend to the interests of the United States" in any case pending in federal court. 28 U.S.C. § 517.

Plaintiffs bring a putative class action challenging Defendants' administration of services for children in foster care, including the unnecessary institutionalization of children with disabilities. Compl., ECF No. 1 ¶¶ 298-99, 307. Defendants filed a Motion to Dismiss on June 26, 2024. Motion to Dismiss, ECF No. 38.

The United States files this Statement of Interest to highlight four principles of law related to Plaintiffs' claims under the ADA and Section 504 about the unnecessary institutionalization of children. Contrary to Defendants' arguments in support of their Motion, (1) the *Rooker-Feldman* doctrine does not apply to Plaintiffs' integration mandate claims; (2) *Younger* abstention does not bar Plaintiffs' integration mandate claims; (3) Plaintiffs need not rely on a state treatment professional's determination to show community-based services are appropriate to the needs of the child; and (4) expansion of community-based services may constitute a reasonable modification of the existing service system.[2]

Interest of the United States

The United States submits this Statement of Interest because this litigation implicates the proper interpretation and application of Title II of the ADA and Section 504 of the Rehabilitation Act.[3] As the federal agency charged with enforcement and implementation of the ADA, the Department of Justice has an interest in supporting the proper and uniform application of the ADA, and in furthering Congress's intent to create "clear, strong, consistent, enforceable

[2] Defendants' Motion to Dismiss also argues that Plaintiffs' claims against the Governor are barred by sovereign immunity, Plaintiffs' ADA claims against DCFS are barred by Eleventh Amendment immunity, Plaintiffs have failed to state substantive due process and family association claims, and Plaintiffs lack a private right of action under the Adoption Assistance and Child Welfare Act. The United States does not address those arguments in this Statement of Interest.

[3] The ADA and Rehabilitation Act are generally construed together. *Clark v. Dep't of Pub. Safety*, 63 F.4th 466, 470 (5th Cir. 2023). Thus, this Statement primarily refers to the ADA, but its arguments apply equally to the Rehabilitation Act.

standards addressing discrimination against individuals with disabilities" and reserve a "central role" for the federal government in enforcing the standards established by the ADA.[4] 42 U.S.C. §§ 12133-12134, 12101(b)(2), 12101(b)(3).

Plaintiffs' Factual Allegations

Plaintiffs are children who are or will be in the custody of Louisiana's child welfare system. Compl. ¶ 255(a). They bring this putative class action against Louisiana's Department of Children and Family Services (DCFS), and the DCFS Secretary and Governor in their official capacities, for violating their rights under the United States Constitution, Title II of the ADA, Section 504 of the Rehabilitation Act, and federal law related to the administration of child welfare systems. Compl. ¶¶ 42-44, 267-308. Plaintiffs bring their ADA and Section 504 claims on behalf of a narrower subclass (the ADA Subclass) of "[a]ll children who are in foster care, who have physical, cognitive, or psychiatric disabilities, and who are currently placed in a psychiatric residential treatment facility, a therapeutic group home, a non-medical group home, or an acute care hospital." Compl. ¶¶ 255(b), 292-308.

The Complaint alleges that Louisiana fails to provide community-based services that would enable Plaintiffs to live in their homes and communities instead of institutions. Compl. ¶¶ 298, 299, 307, 308. These services include, for example, therapeutic foster homes, individualized therapy, and mental health and substance use services. Compl. ¶¶ 220, 228. The lack of community-based services "often leads to DCFS placing foster children in institutions unnecessarily." Compl. ¶ 231. Named Plaintiffs in the ADA Subclass exemplify these issues.

[4] The Department of Justice also coordinates federal agencies' implementation and enforcement of Section 504 and has the authority to enforce Section 504. *See* 28 C.F.R. Part 41; Exec. Order No. 12,250, 45 Fed. Reg. 72,995 (Nov. 2, 1980); 29 U.S.C. § 794(a); *see also* 28 C.F.R. § 0.51(b)(3).

For example, Jacob B. entered DCFS custody in August 2022 after living with his aunt in the community for approximately 15 years. Compl. ¶¶ 47, 48. But since entering DCFS custody, Jacob B. has been in five different institutional placements, including months at psychiatric facilities designed for acute short-term care. Compl. ¶¶ 46, 52, 53. Joseph S. entered DCFS custody when he was ten years old because his mother was unable to care for him due to her own mental health and cognitive disabilities. Compl. ¶ 75. DCFS sent Joseph S. to live in a children's hospital in Houston, Texas, which is over 200 miles away from his community and family. Compl. ¶ 79. Mikaela S. entered DCFS custody in October 2020 because her mother was unable to find housing. Compl. ¶ 138. In less than four years, DCFS has moved her through 27 placements, including psychiatric hospitals and psychiatric residential treatment facilities. Compl. ¶¶ 137, 141, 142, 144.

Plaintiffs seek declaratory and injunctive relief to remedy alleged violations of the ADA and Section 504. Compl. at 91-94. Specifically, Plaintiffs ask the Court to require Defendants to ensure that an adequate array of community-based services are available to children with disabilities and to place children with disabilities in the most integrated setting appropriate to their needs. Compl. at 92-94.

Statutory and Regulatory Background

Congress enacted the ADA "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). It found that, "historically, society has tended to isolate and segregate individuals with disabilities" and that "individuals with disabilities continually encounter various forms of discrimination, including . . . segregation." *Id.* §§ 12101(a)(2), (5). Congress determined that "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." *Id.* § 12101(a)(7). Title II of the ADA prohibits disability discrimination in public services: "[N]o 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.

Congress directed the Attorney General to promulgate regulations to implement Title II. 42 U.S.C. § 12134. These regulations require public entities, *inter alia*, to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d) ("the integration mandate"). The "most integrated setting" is one which "enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible." *Id.* Part 35, App. B. The regulations also require public entities to "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." *Id.* § 35.130(b)(7)(i).

In *Olmstead*, the Supreme Court held that, under the ADA, "unjustified institutional isolation of persons with disabilities is a form of discrimination." *Olmstead*, 527 U.S. at 600. The Court reasoned that "institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life." *Id.* The Court concluded that individuals with disabilities are entitled to community-based services when such services are appropriate, the affected persons do not oppose such services, and such services are a reasonable accommodation,

taking into account the resources available to the state and the needs of others with disabilities. *Id.* at 607.

Argument

I. The *Rooker-Feldman* doctrine does not bar Plaintiffs' ADA and Section 504 claims for systemic relief.

Defendants contend the *Rooker-Feldman* doctrine deprives the Court of subject-matter jurisdiction on the grounds that the Plaintiffs' claims collaterally attack decisions by Louisiana's juvenile courts. The *Rooker-Feldman* doctrine is a "narrow" one that "precludes lower federal courts from 'exercising appellate jurisdiction over final state-court judgments.'" *Miller v. Dunn*, 35 F.4th 1007, 1010 (5th Cir. 2022) (quoting *Lance v. Dennis*, 546 U.S. 459, 463 (2006)). It "is confined to … cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). Where a federal plaintiff does not assert "as a legal wrong an allegedly erroneous decision by a state court," but rather "asserts as a legal wrong an allegedly illegal act or omission by an adverse party, *Rooker-Feldman* does not bar jurisdiction." *Truong v. Bank of Am., N.A.*, 717 F.3d 377, 382-83 (5th Cir. 2013) (citing *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003)). "*Rooker-Feldman* does not apply to a suit seeking review of state agency action." *Exxon Mobil*, 544 U.S. at 287 (citing *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 644 n.3 (2002)). It also "does not prohibit a plaintiff from 'present[ing] some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party.'" *Truong*, 717 F.3d at 382 (quoting *Exxon Mobil,* 544 U.S. at 293).

Here, Plaintiffs' "suit seek[s] review of state agency action" by DCFS, and not rejection of a past state court judgment, so *Rooker*-Feldman does not apply. *See Exxon Mobil*, 544 U.S. at 287. Through their ADA and Section 504 claims, Plaintiffs allege that Defendants have failed in their statutory obligations to administer services, programs, and activities for foster children with disabilities in the most integrated setting appropriate to their needs. They ask this Court to order DCFS to expand the appropriate home- and community-based services that would prevent their unnecessary institutionalization. *See* Compl. ¶¶ 92-93, 292-308; 42 U.S.C. §§ 12131-34; 29 U.S.C. § 794; *Olmstead*, 527 U.S. at 600, 607. The challenged conduct is not the judicial decision-making regarding individual children's placement in specific settings; rather, Plaintiffs are challenging DCFS's administration of its service system for children with disabilities such that many of those children are unnecessarily institutionalized due to a lack of community services. *See Jeremiah M. v. Crum*, 695 F. Supp. 3d 1060, 1084 (D. Alaska 2023) (finding that *Rooker-Feldman* did not apply in analogous case challenging child welfare agency's placement decisions for foster children with disabilities under the ADA and Section 504 because plaintiffs "are not state-court losers; they do not complain of injuries caused by state courts; and they do not seek to undo any state-court judgments"); *see also Jonathan R. by Dixon v. Justice*, 41 F.4th 316, 340 (4th Cir. 2022) (finding that *Rooker-Feldman* did not apply in analogous case because the plaintiffs did "not complain of an injury caused by a state-court judgment but by the [state agency]" and did "not invite district court review and rejection of a state-court judgment" (internal quotations omitted)). Thus, the *Rooker-Feldman* doctrine does not deprive the Court of subject-matter jurisdiction over Plaintiffs' ADA and Section 504 claims.

II. *Younger* abstention does not apply to Plaintiffs' systemic ADA and Section 504 claims.

Defendants also contend the Court should abstain from this case under the *Younger* doctrine on the grounds that any federal court relief would interfere with ongoing cases in Louisiana's juvenile courts. But *Younger* abstention is inapplicable. In *Younger v. Harris*, the Supreme Court held that federal courts must abstain from enjoining ongoing state court criminal proceedings. 401 U.S. 37, 41 (1971). The Supreme Court has since established limiting principles on *Younger*'s scope. In *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, the Supreme Court limited *Younger* abstention to when (1) there is an ongoing state judicial proceeding; (2) that proceeding implicates important state interests; and (3) there is an adequate opportunity in the state proceeding to raise constitutional challenges. 457 U.S. 423, 432 (1982). In *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans* (*NOPSI*), the Supreme Court identified three "exceptional" categories of state judicial proceedings to which *Younger* applies: (1) ongoing state criminal prosecutions; (2) certain quasi-criminal civil enforcement proceedings; and (3) "civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." 491 U.S. 350, 368 (1989). Finally, in *Sprint Commc'ns, Inc. v. Jacobs*, the Supreme Court further limited *Younger* by clarifying that these categories are the *only* circumstances in which *Younger* applies. 571 U.S. 69, 78, 81-82 (2013).[5]

Following *Younger* and its progeny, the Fifth Circuit applies a two-part test to determine whether *Younger* abstention is appropriate. First, it determines whether a state proceeding falls into one of the three categories articulated in *NOPSI* and *Sprint*. If it does, then the court

[5] To the extent *Younger* abstention cases were decided prior to *Sprint*, and therefore do not apply the limiting principles articulated in *NOPSI* and *Sprint*, they have limited value to the Court's analysis. *See, e.g.*, *31 Foster Child. v. Bush*, 329 F.3d 1255, 1274-82 (11th Cir. 2003); *Joseph A. v. Ingram*, 275 F.3d 1253, 1268-74 (10th Cir. 2002); *J.B. v. Valdez*, 186 F.3d 1280, 1291-93 (10th Cir. 1999); *DeSpain v. Johnston*, 731 F.2d 1171, 1176-81 (5th Cir. 1984). The Court should rely on these cases only for their application of *Middlesex*.

considers whether the three *Middlesex* requirements warrant abstention. *See, e.g.*, *Google, Inc. v. Hood*, 822 F.3d 212, 222-23 (5th Cir. 2016).[6]

Younger abstention does not apply to Plaintiffs' ADA and Section 504 claims because Louisiana's juvenile court proceedings do not fit into any of the three "exceptional" *Younger* categories. Even if they did, this case should still proceed because the *Middlesex* requirements do not warrant abstention.

A. The relevant state hearings do not fall within the three categories that warrant *Younger* abstention.

Child placement hearings are not criminal prosecutions, quasi-criminal enforcement proceedings, or civil proceedings like contempt hearings. *See Sprint*, 571 U.S. at 78. Once a child is placed in DCFS custody, DCFS has "authority over the placement within its resources and the allocation of other available resources within the department for children judicially committed to its custody." La. Child.'s Code art. 672(A)(1). It must "develop a case plan detailing [its] efforts toward achieving a permanent placement for the child." *Id.* at art. 673. The case plan must "be designed to achieve placement in the least restrictive, most family-like, and most appropriate setting available." *Id.* at arts. 675(A), 702(C)(5). The presiding court has the authority to disapprove a placement chosen by DCFS if it is not in the best interest of the child, so it holds regular hearings to review the content and implementation of the case plan, as well as the permanency plan that is most appropriate and in the best interest of the child.[7] *Id.* at arts.

[6] The Fifth Circuit has sometimes moved directly to an analysis of the *Middlesex* factors where the parallel state proceeding clearly falls into the one of the three "exceptional circumstances." That is not the case here. Although initial child removal proceedings in certain circumstances have been deemed to fall into one of *Younger*'s categories, other ongoing child welfare proceedings have not.

[7] A case plan describes the efforts DCFS will make toward achieving a permanent placement for a child in the least restrictive, most family-like, and most appropriate setting available, and close to the parents' homes. La. Child.'s Code arts. 673, 675. A permanency plan describes a child's permanent placement, such as the legal custody of the parents, adoption, or placement with a legal guardian. *Id.* at art. 702.

672(A)(2), 677(B), 692(A), 702. The court will approve the case and permanency plans if they are "in the best interest of the child." *Id.* at arts. 677(B), 710(A)(2). Alternatively, the court may "[f]ind that the case plan is not appropriate, in whole or in part, …and order the department to revise the case plan accordingly." *Id.* at art. 700.

These case review hearings and permanency hearings are clearly not "state criminal prosecutions."[8] Nor are they "quasi-criminal" civil enforcement proceedings. Civil enforcement proceedings are "quasi-criminal" if they are "akin to a criminal prosecution in important respects." *Sprint*, 571 U.S. at 79 (internal quotations omitted); *see also Clark v. Edwards*, No. 21-177, 2022 WL 193741, at *9 (M.D. La. Jan. 3, 2022). They "are characteristically initiated to sanction the federal plaintiff, *i.e.*, the party challenging the state action, for some wrongful act." *Sprint*, 571 U.S. at 79; *see also All Am. Check Cashing, Inc. v. Corley*, 191 F. Supp. 3d 646, 655 (S.D. Miss. 2016). Here, the "federal plaintiffs" are children with disabilities in the custody of DCFS, and the case review and permanency hearings are not initiated to sanction them for any wrongful acts. *See Sprint*, 571 U.S. at 79. These are not enforcement proceedings against the child, let alone "quasi-criminal" enforcement proceedings. *See Jeremiah M.*, 695 F. Supp. 3d at 1078-79 (finding that analogous child welfare proceedings were not "quasi-criminal" enforcement proceedings for purposes of *Younger* abstention).

Nevertheless, Defendants argue that the Supreme Court's decision in *Moore v. Sims*, 442 U.S. 415 (1979), compels *Younger* abstention here. While *Moore* did discuss abstention in the context of child welfare proceedings, its application here is inapt. In *Moore*, two parents and their minor children brought an action in federal court to challenge the constitutionality of a state

[8] Defendants cite to *Daves v. Dallas Cnty., Tex.*, 64 F.4th 616 (5th Cir. 2023), in support of *Younger* abstention. But the ongoing state proceedings in that case are criminal adjudications. *Id.* at 621, 631. Therefore, any findings regarding the applicability of *Younger* abstention in *Daves* are inapplicable here.

statute permitting removal of children from their homes following allegations of child abuse. *Younger* abstention was appropriate in that case because "the temporary removal of a child in a child-abuse context is … 'in aid of and closely related to criminal statutes.'" 442 U.S. at 423 (quoting *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975)). The plaintiff parents in that case were effectively sanctioned in the state court proceedings and asked a federal court to review that sanction.

Plaintiffs here are not similarly situated. They are not the parents against whom a sanction-like removal action has been taken, but rather children who are already in DCFS custody and seek to challenge Louisiana's systemic practices. Moreover, the ongoing state court proceedings are case review hearings rather than initial removal actions. *See Jeremiah M.*, 695 F. Supp. 3d at 1078-79 (rejecting comparison to *Moore* because state court proceedings were not enforcement proceedings, lacked parties against whom criminal statutes would be enforced, and lacked any sanctions against federal plaintiffs); *see also Jonathan R.*, 41 F.4th at 330 (rejecting defendants' comparison to *Moore* because *Moore* was concerned with the infringement of parental rights in the initial child-removal proceeding, whereas the "*ongoing* individual hearings [at issue in *Jonathan R.*] serve to protect the children who would be plaintiffs in federal court" (emphasis in original)); *Tinsley v. McKay*, 156 F. Supp. 3d 1024, 1034 (D. Ariz. 2015) (finding that the "animating purpose of the ongoing dependency proceedings in this case is to plan for and monitor the development and well-being of children, not to investigate or penalize those who might have contributed to their dependency"); *Ocean S. v. Los Angeles Cnty.*, Case 2:23-cv-6921,

ECF No. 120 at 9 (C.D. Cal. June 11, 2024) (determining that state juvenile dependency hearings are not quasi-criminal).[9]

The state court case review hearings also do not fall into *Younger*'s third category of civil proceedings. *See Sprint*, 571 U.S. at 73. This "third category of cases is reserved for civil proceedings implicating a state's interest in *enforcing* the orders and judgments of its courts, such as cases involving civil contempt orders or state rules for posting bond pending appeal." *Nevarez v. Nevarez*, 664 F. Supp. 3d 680, 692 (W.D. Tex. 2023) (internal quotations omitted); *see also Ford v. La. State Bd. of Med. Exam'rs*, No. 18-4149, 2018 WL 5016220, at *3 (E.D. La. Oct. 16, 2018). This case does not implicate the state courts' ability to enforce their own orders or judgments. *See Jeremiah M.*, 695 F. Supp. 3d at 1080 (finding that analogous child welfare proceedings did not fall into *Younger*'s third category because the federal case did "not implicate the administration of the state judicial process or the state courts' ability to enforce compliance with their judgments"). Any orders by this Court for DCFS to expand the supply of available home- and community-based services for foster children with disabilities going forward would have no effect on existing state court orders. Such a remedy would instead enable DCFS to provide more services in the community in the future—services which are too often available only in institutional settings.

[9] The Seventh Circuit reached the opposite conclusion in *Ashley W. v. Holcomb*, 34 F.4th 588, 591-94 (7th Cir. 2022), another case challenging a state agency's administration of the child welfare system. But the court in that case failed to apply the *Younger* test and instead summarily concluded that abstention was appropriate because both *Moore* and *Ashley W.* were child welfare matters. *Id.* The court did not assess whether the state court proceedings at issue in *Ashley W.* fit into one of the *Younger* categories, ignoring the critical distinction between the plaintiffs in the two matters and the type of child welfare hearing that was implicated. Because the Seventh Circuit failed to apply the correct test before abstaining, the Fourth Circuit recently disregarded *Ashley W.* when deciding *Jonathan R.* *See* 41 F.4th at 332 & n.7. Moreover, it appears that only courts in the Seventh Circuit have followed *Ashley W.* *See A.B. v. Holcomb*, No. 3:23-cv-760, 2024 WL 2846363, at *4-*8 (N.D. Ind. June 5, 2024).

B. Even if the state court proceedings fell into one of *Younger's* exceptional circumstances, abstention is barred by the *Middlesex* requirements.

The Court does not need to reach the *Middlesex* requirements because the state court proceedings do not fall into one of the three *Younger* categories. But if it does reach this question, abstention would still be inappropriate. The *Middlesex* requirements are only satisfied where "(1) the federal proceeding would interfere with an ongoing state judicial proceeding; (2) the state has an important interest in regulating the subject matter of the claim; ***and*** (3) the plaintiff has an adequate opportunity in the state proceedings to raise constitutional challenges." *Bice v. La. Pub. Def. Bd.*, 677 F.3d 712, 716 (5th Cir. 2012) (emphasis added) (internal quotations omitted). Here, even assuming the state has important interests in child welfare and regulating the foster care system, Defendants cannot meet the other two *Middlesex* requirements. As to the first and third prongs, systemic relief in the form of more community-based services for children with disabilities in DCFS custody would not interfere with ongoing permanency and case review hearings in state juvenile court, and those juvenile court hearings, as discussed below, do not provide children with an adequate opportunity to challenge the Defendants' systemic failure to provide community services. *See M.D. v. Perry*, 799 F. Supp. 2d 712, 717-23 (S.D. Tex. 2011) (finding the *Middlesex* requirements did not warrant *Younger* abstention where there was an important state interest, but no ongoing state judicial proceeding or adequate opportunity to be heard).

A decision on systemic ADA and Section 504 claims would not interfere with the state court's ongoing permanency and case review hearings because it would merely expand the options available to the court—not impose any limitations. "In order to decide whether the federal proceeding would interfere with the state proceeding, [the federal court] look[s] to the relief requested and the effect it would have on the state proceedings." *Bice*, 677 F.3d at 717

(internal quotations omitted). Plaintiffs seek injunctive and declaratory relief related to expansion of the existing array of home- and community-based services so that DCFS may place foster children with disabilities in the most integrated setting appropriate to their needs. This relief would not interfere with the state court's ability to conduct permanency or case review hearings for children in DCFS custody. Nor would this relief limit the court's ability to review case plans and permanency plans, consider relevant evidence, and make findings about whether children can safely return to the custody of their parents. Instead, the requested relief in this case would provide DCFS with additional less-restrictive options when designing case and permanency plans. Because the relief would not interfere with state court proceedings, this factor weighs against *Younger* abstention. *See Jonathan R.*, 41 F.4th at 333-35 (finding that analogous federal case would not interfere with state hearings because the plaintiffs did not seek to "pause" or "end" state proceedings, but rather "to bring the inner workings of the executive branch into compliance with federal law").

Moreover, the state court's permanency and case review hearings do not provide an adequate opportunity for Plaintiffs to raise integration mandate claims under the ADA and Section 504. Plaintiffs' integration mandate claims necessarily require systemic changes by Defendants, such as expanding the array of community-based services to ensure that children in its custody can be served in the most integrated setting appropriate to their needs. But the purpose of state court permanency and case review hearings is to review and approve permanency and case plans for *individual* children designed based on the "available" services and settings, *see* La. Child.'s Code arts. 675(A), 677, 690, not to expand that availability or to address systemic deficiencies in how DCFS administers its services. These "individual periodic hearings do not afford an adequate opportunity for Plaintiffs to press their systemic claims"

because they are necessarily concerned with a particular child's immediate circumstances. *See Jonathan R.*, 41 F.4th at 332; *see also M.D.*, 799 F. Supp. at 712, 721 (declining to abstain under *Younger* because "[s]tate court placement review hearings focus on whether the particular child's needs are being met, not overarching systemic concerns or constitutional violations"); *Jeremiah M.*, 695 F. Supp. 3d at 1081. Although state courts may reject case or permanency plans if they determine the plans are not in the best interest of the child, these court orders lead to DCFS modifying the *plan*, not the system. Plaintiffs therefore do not have the opportunity to adequately raise their systemic challenges in the state court proceedings, further counseling against *Younger* abstention. *Cf. Timothy B. v. Kinsley*, No. 22-1046, 2024 WL 1350071, at *17 (M.D.N.C. Mar. 29, 2024) (finding that state court placement hearings did not collaterally estop plaintiffs from raising ADA and Section 504 claims in federal court because "Plaintiffs' claims are based on Defendants' systemic failures to provide an adequate supply of community-based services to children in foster care who would otherwise qualify for such services" and "[a]ny state court proceeding determining that placement in a [psychiatric residential treatment facility] was the most appropriate placement available at the time does not preclude this current action").

The ongoing state court proceedings do not fall into the three "exceptional" circumstances warranting *Younger* abstention. Even if they did, *Younger* abstention is inappropriate because relief in this case would not interfere with the state court proceedings and the state court proceedings do not offer an adequate opportunity to raise integration mandate claims.

III. Plaintiffs need not rely on a state treatment professional's determination to show community-based services are appropriate to the needs of the child.

Defendants contend that the ADA and Section 504 claims should be dismissed because Plaintiffs fail to allege that state treatment professionals determined they could be appropriately

served in the community. *See* Motion at 34-35. This argument is misguided. Plaintiffs alleging a violation of the integration mandate need not allege a treatment professional's appropriateness determination, let alone a determination by a *state* treatment professional.

Courts have made clear that a plaintiff need not allege in an *Olmstead* complaint that any treatment professional has recommended community-based services, as a plaintiff "would not have an occasion to be assessed for programs that should, but do not, exist." *M.J. v. District of Columbia*, 401 F. Supp. 3d 1, 12-13 (D.D.C. 2019). Indeed, plaintiffs will have the opportunity to develop evidence in support of their allegations that they are appropriate for community-based services during the litigation. *See id.* at 13 ("At [the pleading] stage of the litigation, plaintiffs have alleged that they are able to live in their homes and communities, if the [State] provided the required treatment; these allegations are enough to meet the pleading standards. At a later stage, plaintiffs will be required to provide evidence to back up their claims that community-based treatment was appropriate, but that requirement will not be imposed on them at [the 12(b)(6)] stage of the proceedings."); *Ga. Advoc. Off. v. Georgia*, 447 F. Supp. 3d 1311, 1323 (N.D. Ga. 2020) (explaining that a description of why the plaintiffs are appropriate for the community is sufficient to survive a motion to dismiss, as "some determination from a professional" is not needed at this stage).

Moreover, an appropriateness determination by a state treatment professional is not necessary to prove an integration mandate claim. Though the record in *Olmstead* included state treatment professionals' opinions about appropriateness, that is because the plaintiffs in that case were in a *state* psychiatric hospital and receiving care from hospital professionals. *See Olmstead*, 527 U.S. at 593, 603. "[T]here [was also] no genuine dispute concerning the status of [the plaintiffs] as individuals 'qualified' for noninstitutional care." *Id.* at 602-3. *Olmstead* did

not hold that the only way to demonstrate an individual is appropriate for an integrated setting is a state treatment professional's opinion. *See id.* Post *Olmstead*, courts regularly have ruled that a person asserting a violation of the integration mandate need not rely on a state's treatment professionals for the appropriateness determination. For example, the Fifth Circuit recently recognized that determinations of appropriateness are not limited to a state's treatment professionals. *See Harrison v. Young*, 103 F.4th 1132, 1138 (5th Cir. 2024) (finding no grounds to grant summary judgment where record contained conflicting medical opinions regarding appropriateness, including opinions from non-state treatment professionals). Other courts have found the same. *See, e.g.*, *M.J.*, 401 F. Supp. at 12-13; *Day v. District of Columbia*, 894 F. Supp. 2d 1, 23 (D.D.C. 2012); *Joseph S. v. Hogan*, 561 F. Supp. 2d 280, 291 (E.D.N.Y. 2008); *Long v. Benson*, No. 08-0026, 2008 WL 4571904, at *2 (N.D. Fla. Oct. 14, 2008); *Frederick L. v. Dep't of Pub. Welfare*, 157 F. Supp. 2d 509, 539-40 (E.D. Pa. 2001). Indeed, to hold otherwise would allow states to circumvent their obligations under *Olmstead* by withholding such determinations. *See Day*, 894 F. Supp. 2d at 24 ("Limiting the evidence on which *Olmstead* plaintiffs may rely would enable public entities to circumvent their *Olmstead* requirements by failing to require professionals to make recommendations regarding the ability of individuals to be served in more integrated settings.").[10]

In any event, the Complaint alleges that treatment professionals determined Alan W. and Jackson J. were appropriate for less restrictive settings. Compl. ¶¶ 15, 86, 103. Plaintiffs also allege that Joseph S. and Mikaela S. have been unnecessarily institutionalized in overly

[10] Defendants cite to the Fifth Circuit's decision in *United States v. Mississippi* in support of their contention that only a state's treatment professional can determine appropriateness. Both *Mississippi* and *Olmstead* involved people receiving treatment in state hospitals. In *Mississippi*, the Fifth Circuit analogized to the facts in *Olmstead* to reach its conclusion about what type of evidence was required. 82 F.4th 387, 394-95 (5th Cir. 2023). The plaintiffs in this case are receiving treatment in a wide range of settings that are not state-operated treatment facilities; requiring a recommendation from state treatment professionals in this context is illogical as well as at odds with the case law.

restrictive settings because DCFS could not provide appropriate community-based settings. *See, e.g.*, Compl. ¶¶ 15, 74, 77, 79, 143, 144, 146. The Complaint also repeatedly states that DCFS often makes placement decisions regardless of the child's needs, and that children in its custody are unnecessarily placed in institutional settings that are overly restrictive and ill-suited for the needs of the child. Compl. ¶¶ 12, 14, 15, 200, 231.[11] Contrary to Defendants' assertions, the Complaint does contain allegations of appropriateness and, as noted above, need not include allegations of state treatment professional determinations of appropriateness.

IV. Expansion of community-based services may constitute a reasonable modification of the existing service system.

Defendants appear to contend that if Plaintiffs allege the state has not made sufficient resources available to meet the needs of children in DCFS custody, then there cannot be sufficient resources to implement any modifications. *See* Motion at 35. But Defendants' argument is based on a flawed understanding of the applicable legal framework and a misreading of the Complaint.

Where a state administers a system to provide services to people with disabilities, modifying that system to serve people who qualify for those services in the community, rather than in institutions, may be a reasonable modification. Proposed modifications that expand the availability of existing services are reasonable, particularly when the modifications align with the public entity's own stated plans and obligations. *See, e.g.*, *Henrietta D. v. Bloomberg*, 331 F.3d 261, 280-81 (2d Cir. 2003); *Haddad v. Arnold*, 784 F. Supp. 2d 1284, 1304-05 (M.D. Fla. 2010) (finding that providing a service already in state's service system to additional individuals is not a fundamental alteration).

[11] Though they summarily state that Plaintiffs have not alleged the non-opposition element of an integration mandate claim, Defendants do not make legal arguments on the issue.

Here, Plaintiffs articulate a potential reasonable modification of expanding community-based services to prevent unnecessary institutionalization. They allege that Defendants intend for the placement of children in institutional facilities to be a care setting of last resort and consider these settings to be interim, short-term settings. Compl. ¶ 231. But there are not enough of the existing community services to meet the need and prevent unnecessary institutionalization. Compl. ¶¶ 114, 166-67, 171, 176, 197, 220, 227-28, 230. For example, Plaintiffs allege that there are limited community services in rural areas, there are waiting lists for services for medically fragile children and children with intellectual disabilities, and there are insufficient community services for children with substance use or mental health disabilities. Compl. ¶¶ 167, 220. They also allege there are only ten therapeutic foster homes in the entire state, so DCFS places children in segregated psychiatric facilities instead. Compl. ¶¶ 158, 197. These allegations are sufficient at the pleading stage.

To the extent Defendants argue that the requested modifications to the service system would amount to a fundamental alteration, this is an affirmative defense and a fact-intensive inquiry that is not appropriate for resolution on a motion to dismiss. *See Mary Jo C. v. N.Y. State & Local Ret. Sys.*, 707 F.3d 144, 153 (2d Cir. 2013).

Conclusion

For the foregoing reasons, the United States respectfully requests that the Court consider this Statement of Interest.

Respectfully submitted,

Dated: August 20, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2024, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to all counsel of record.

/s/ Katherine K. Green
KATHERINE K. GREEN

Dated August 20, 2024