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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION (LOS ANGELES)

OCEAN S., *et al.*,

Plaintiffs,

v.

LOS ANGELES COUNTY, *et al.*,

Defendants.

Case No. 2:23-cv-06921-JAK-E

**STATEMENT OF INTEREST REGARDING DEFENDANTS' MOTIONS TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT**

Date: January 27, 2025
Time: 8:30 a.m.
Courtroom: 10B

Hon. John A. Kronstadt
United States District Judge

# TABLE OF CONTENTS

# TABLE OF AUTHORITIES

**Cases**

**Statutes**



**Regulations**

## STATEMENT OF INTEREST OF THE UNITED STATES

Pursuant to 28 U.S.C. § 517,[1] the United States of America respectfully submits this Statement of Interest to provide its views regarding the proper interpretation of Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12131 *et seq.*, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, as to the claims in this case. In particular, the United States addresses certain legal issues concerning those statutes' "integration mandate," as interpreted by the Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581 (1999). As the federal agency charged with enforcing and implementing Title II, the Department of Justice (DOJ) has an interest in supporting the statute's proper and uniform application and furthering Congress's intent to create "clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities."[2] 42 U.S.C. §§ 12101(b)(2), 12133-12134.

Plaintiffs—seven youths with disabilities in foster care—bring a putative class action against various State and County entities and officials. As relevant here, Plaintiffs contend that Defendants' administration of services for youth in foster care results in the unnecessary segregation of youth with mental health disabilities in violation of Title II and Section 504. Second Am. Compl. (SAC), ECF No. 130-1, ¶¶ 304-16, 427-53. Defendants have filed motions to dismiss certain claims, including Plaintiffs' integration claim. State Defs.' Br. in Supp. of Mot. to Dismiss (State Defs.' Br.), ECF No. 137, at 25-26; County Defs.' Br. in Supp. of Mot. to Dismiss (County Defs.' Br.), ECF No. 138-

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[1] Congress has authorized the Attorney General to send "any officer of the Department of Justice . . . to any . . . district in the United States to attend to the interests of the United States in a suit pending in a court of the United States." 28 U.S.C. § 517.

[2] 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. pt. 41; Exec. Order No. 12,250, 45 Fed. Reg. 72,995 (Nov. 2, 1980); 29 U.S.C. § 794a(a)(2); *see also* 28 C.F.R. § 0.51(b)(3).

1, at 27-33.[3]

Contrary to Defendants' arguments, a serious risk of unnecessary institutionalization is actionable under the integration mandate of Title II and Section 504. As explained below, the availability of integration claims based on a serious risk of needless institutionalization follows from the statutory text and precedent of the Ninth Circuit and five other courts of appeals.

Defendants likewise err in arguing that, even if serious-risk claims are cognizable, individuals advancing such claims must allege that (1) they are at risk of being forced to enter an institution to obtain specific services that could otherwise be provided in the community; and (2) treatment professionals have determined that those services are appropriate. Instead, Plaintiffs need only allege that a lack of access to services in the community places them at serious risk of unnecessary institutionalization; they need not allege that the services they seek in the community are precisely the same services provided in an institution. And while Plaintiffs must allege that services in integrated settings are appropriate for their needs, they need not allege that the appropriateness determination was made by a treatment professional.

Finally, contrary to Defendants' argument, allegations that a public entity oversees and administers a service system may sufficiently show a causal relationship between the entity's conduct and a serious risk of unnecessary institutionalization.

## I. PLAINTIFFS' FACTUAL ALLEGATIONS

Named Plaintiffs are seven youth in foster care ("foster youth") between 16 and 21 years of age ("transition-age"). SAC ¶ 1. They have filed suit on behalf of a putative class and specific subclasses of transition-age foster youth with mental health disabilities who are—or will be—in extended foster care in Los Angeles County. Plaintiffs assert claims under the ADA, the Rehabilitation Act, the Medicaid Act, and the Constitution. *Id.* ¶¶ 1, 367-453. As relevant here, Plaintiffs allege that Defendants unnecessarily

[3] On October 7, 2024, State Defendants filed a Joinder to County Defendants' Motion to Dismiss. State Def.'s Joinder to County Def.'s Mot. to Dismiss, ECF No. 147.

segregate certain Plaintiffs in Short Term Residential Therapeutic Programs (STRTPs), in violation of the integration mandate of the ADA and the Rehabilitation Act. *Id.* ¶¶ 63, 307-08, 357, 427-53.

In particular, Plaintiffs allege that Defendants fail to provide necessary community-based placements and services to transition-age foster youth who are "capable" of living in the community and "wish to receive services" there. As a result, Plaintiffs allege that they are unnecessarily segregated in "STRTPs, hospitals, institutions, and other segregated settings" or placed at serious risk of needless institutionalization. *See id.* ¶¶ 433-35, 447-48, 451-52. Services that Defendants fail to provide include "intensive home and community-based services." *Id.* ¶¶ 435, 448.

For example, Plaintiff Onyx G. has not consistently received the "Intensive Care Coordination" and mobile crisis services that she needs in the community and that treating professionals have recommended for her. *See id.* ¶ 59. Onyx G. has experienced repeated placements in STRTPs between 2020 and 2024, and was assessed by a mental health professional to need an array of intensive behavioral health services. *Id.* ¶¶ 64, 74. But each time she was discharged from a STRTP, she either stopped receiving such services or received them inconsistently. *Id.* ¶ 74. She also did not receive any case management services that could have enabled her to receive other needed behavioral health services. *Id.* ¶ 74. Onyx G. has only received mobile crisis services once but has been hospitalized repeatedly for suicidal ideation. *Id.* ¶ 75.

Treating professionals also recommended "Intensive Care Coordination" and mobile crisis services for Plaintiffs Junior R. and Ocean S., who have not received them. *Id.* ¶¶ 125, 147. Junior R. and Ocean S. have each experienced multiple STRTP placements, including, in Junior R.'s case, placements in six different STRTP facilities. *Id.* ¶ 129. While Junior R. and Ocean S. were placed at a STRTP, treating professionals determined that they needed intensive behavioral health services, including case management or "Intensive Care Coordination" services. *Id.* ¶¶ 138, 161. However, upon discharge from his last STRTP, Junior R. stopped receiving intensive behavioral

health services and did not receive any case management services, such as "Intensive Care Coordination" services. *Id.* Within months, Junior R. experienced repeated mental health crises for which he did not receive a response from a mobile crisis team, although such a response was warranted. *See id.* ¶ 162. Instead, on one occasion, he was placed under a 72-hour hold in the psychiatric unit of a hospital. *Id.* Upon discharge from the hospital, he only sporadically received the intensive behavioral health services that had been recommended for him. *Id.* ¶ 163. Similarly, Ocean S. experienced gaps in the behavioral health services she received after being discharged from a STRTP. *Id.* ¶ 138.

An additional Plaintiff, Monaie T., has not received the "Intensive Care Coordination" and mobile crisis services that she needs. *Id.* ¶ 170. Monaie T. was institutionalized for several months in a STRTP. *Id.* ¶ 177. Upon discharge from the STRTP, Monaie T. did not receive community-based behavioral health services. *See id.*

All named Plaintiffs are enrolled in Medicaid. *Id.* ¶¶ 58, 124, 146, 169. Specialty Mental Health Services are a set of intensive behavioral health services covered by Medicaid. *See id.* ¶¶ 24, 325-26. Plaintiffs are eligible for a variety of necessary community-based Specialty Mental Health Services, including "Intensive Care Coordination"[4] and "Mobile Crisis Response"[5] services. *See id.* ¶¶ 327, 329.

Defendants are State and County entities and officials responsible for the administration, oversight, and provision of foster care and Medicaid services to foster youth. *Id.* ¶¶ 1-2. The State Defendants include the California Health and Human Services Agency (CalHHS), the Secretary of CalHHS, the California Department of Social Services (CDSS), the Director of CDSS, the California Department of Health

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[4] Intensive Care Coordination "is a targeted and intensive case management service that facilitates the assessment of, care planning for, and coordination of behavioral health services, and includes formal and informal supports and team planning." SAC ¶ 330.

[5] Mobile Crisis Response services "provide community-based rapid response, individual assessment and community-based stabilization" and "are intended to reduce the immediate risk of danger and avoid unnecessary psychiatric hospitalization or law enforcement involvement." *Id.* ¶ 331.

Care Services (DHCS), and the Director of DHCS. *Id.* ¶¶ 25-30. CDSS is responsible for supervising and monitoring the administration of foster care services in California. *Id.* ¶ 27. DHCS is responsible for the administration of California's Medicaid program. *Id.* ¶ 29. As the single state Medicaid agency, DHCS administers behavioral health services to youth through two parallel systems: (1) County Mental Health Plans, which provide for Specialty Mental Health Services, and (2) Medi-Cal Managed Care Plans (or fee for service providers for youth not enrolled in managed care), which provide for other services. *Id.* ¶ 324. CalHHS oversees and monitors both CDSS and DHCS. *Id.* ¶ 25. The County Defendants include Los Angeles County, the Los Angeles County Department of Children and Family Services (DCFS), and the Los Angeles County Department of Mental Health (DMH). *Id.* ¶¶ 22-24. DCFS is responsible for administering foster care services in Los Angeles County. *Id.* ¶ 23. DMH is responsible for providing behavioral health services to transition-age foster youth in Los Angeles, including Specialty Mental Health Services. *Id.* ¶ 24. The County oversees and monitors both DCFS and DMH. *Id.* ¶ 22.

## II. 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 by public entities: "[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 that "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 Title II, the "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 can be reasonably accommodated, taking into account the resources available to the public entity and the needs of others with disabilities. *Id.* at 607 (plurality opinion).

Congress modeled Title II on Section 504 of the Rehabilitation Act, which uses similar language to bar disability discrimination by recipients of federal financial assistance. 29 U.S.C. § 794(a); *see also* 28 C.F.R. § 41.51(d) (integration mandate in regulations coordinating the enforcement of Section 504). Title II and Section 504 are generally "interpreted coextensively because there is no significant difference in the analysis of rights and obligations created by the two Acts." *Payan v. Los Angeles Cmty.*

*Coll. Dist.*, 11 F.4th 729, 737 (9th Cir. 2021) (internal quotation marks omitted). For simplicity, this brief focuses on Title II.

## III. ARGUMENT

### A. Placement of Individuals at Serious Risk of Needless Institutionalization Constitutes Discrimination Under the ADA

Defendants wrongly contend that Plaintiffs have not alleged a violation of the integration mandate because they allege that they are merely at risk of unnecessary institutionalization. *See* County Defs.' Br. at 28-31. Plaintiffs can properly seek relief under the integration mandate when Defendants place them at serious risk of unnecessary institutionalization, in addition to when Defendants have unnecessarily institutionalized them. Binding precedent from the Ninth Circuit holds that claims under the ADA's integration mandate can proceed when "the challenged state action creates a serious risk of institutionalization." *M.R. v. Dreyfus*, 663 F.3d 1100, 1116 (9th Cir. 2011), *opinion amended and superseded on denial of reh'g*, 697 F.3d 706 (9th Cir. 2012); *see also Townsend v. Quasim*, 328 F.3d 511, 517, 520 (9th Cir. 2003) (allowing integration claim to proceed where plaintiff was not institutionalized at the time of his lawsuit but sought to avoid placement in a nursing facility). Indeed, the Ninth Circuit has joined five other circuits in ruling that placing individuals at serious risk of unnecessary institutionalization is actionable under Title II. *M.R.*, 663 F.3d at 1115-18; *Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 979 F.3d 426, 460-61 (6th Cir. 2020); *Steimel v. Wernert*, 823 F.3d 902, 911-12 (7th Cir. 2016); *Davis v. Shah*, 821 F.3d 231, 262-64 (2d Cir. 2016); *Pashby v. Delia*, 709 F.3d 307, 321-22 (4th Cir. 2013); *Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175, 1180-82 (10th Cir. 2003); *but see United States v. Mississippi*, 82 F.4th 387, 395-96 (5th Cir. 2023) (holding serious risk of needless institutionalization not actionable on that particular record and distinguishing the

decisions of the six other circuits).[6]

The Ninth Circuit's holding is compelled by the ADA's statutory language as explained in *Olmstead*. There, the Supreme Court concluded that unnecessary institutionalization is a form of unlawful "discrimination" under the ADA because, "to receive needed medical services," individuals with disabilities must "relinquish participation in community life they could enjoy given reasonable accommodations," while individuals without disabilities "can receive the medical services they need without similar sacrifice." 527 U.S. at 601. Under this reasoning, a public entity similarly discriminates against individuals with disabilities living in the community when it requires them to "choose between forgoing necessary medical services while remaining in the community or receiving necessary medical services while institutionalized," *Waskul*, 979 F.3d at 460—a choice that individuals without disabilities do not have to make.

Moreover, as the Ninth Circuit explained in *M.R.*, the conclusion that integration-mandate claims under Title II can proceed when a plaintiff is at serious risk of unnecessary institutionalization "better effectuates the purpose of the ADA 'to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities.'" *M.R.*, 663 F.3d at 1117-18. Furthermore, the integration mandate "would be meaningless if plaintiffs were required to segregate themselves by entering an institution before they could challenge an allegedly discriminatory law or policy that threatens to force them into segregated isolation." *Fisher*, 335 F.3d at 1181. Individuals with disabilities could be exposed to irreversible harm if they could not bring an integration claim until they have been institutionalized. *See*, *e.g.*, *M.R.*, 663 F.3d at 1118 (recognizing that individuals may become accustomed to living in an institution

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[6] District courts in the Ninth Circuit have also widely recognized claims based on risk of needless institutionalization. *See*, *e.g.*, *Jeremiah M. v. Crum*, 695 F. Supp. 3d 1060, 1107 (D. Alaska 2023); *A. H. R. v. Wash. State Health Care Auth.*, 469 F. Supp. 3d 1018, 1044 (W.D. Wash. 2016); *Cota v. Maxwell-Jolly*, 688 F. Supp. 2d 980, 994 (N.D. Cal. 2010); *V.L. v. Wagner*, 669 F. Supp. 2d 1106, 1119-20 (N.D. Cal. 2009); *Brantley v. Maxwell-Jolly*, 656 F. Supp. 2d 1161, 1170-71 (N.D. Cal. 2009).

and unable to function in an integrated setting); *Harrison v. Young*, 103 F.4th 1132, 1136 (5th Cir. 2024) (plaintiff alleged that inability to access needed services would cause plaintiff's death).

In any event, a plaintiff has Article III standing to bring a claim based on a future injury when "the threatened injury [such as unnecessary institutionalization] is 'certainly impending,' or there is a 'substantial risk' that the harm will occur." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). If this Court found that Defendants created such a risk of unnecessary institutionalization, it would have the authority to grant appropriate equitable relief to prevent the unnecessary institutionalization that *Olmstead* indisputably proscribes. *See, e.g.*, *Thomas v. Bryant*, 614 F.3d 1288, 1318 (11th Cir. 2010) ("[I]t is . . . well-established that injunctive relief is appropriate to prevent a substantial risk of serious injury from ripening into actual harm.") (internal quotation marks omitted).

Contrary to Defendants' arguments, *M.R.* remains binding on this Court. Defendants wrongly contend that *M.R.* is no longer good law because it "was based entirely on deference" under *Auer v. Robbins*, 519 U.S. 452 (1997), to DOJ's interpretation of its integration regulation (County Defs.' Br. at 29-31), in contravention of the principles the Supreme Court later embraced in *Kisor v. Wilkie*, 588 U.S. 558 (2019); *see also United States v. Castillo*, 69 F.4th 648, 655-58 (9th Cir. 2023) (concluding that a pre-*Kisor* Ninth Circuit decision was no longer good law because it hinged on a relaxed approach to deference that was inconsistent with *Kisor*). But *M.R.* was not "based entirely" on the court's deference to DOJ's interpretation of its regulation. Rather, the court also exercised its *independent* judgment in finding serious-risk claims to be actionable.

In finding that "DOJ's interpretation is not only reasonable; it also better effectuates the purpose of the ADA," *M.R.*, 663 F.3d at 1117-18, the Ninth Circuit both acknowledged DOJ's view and exercised its independent judgment, consistent with *Kisor*. Under *Auer*, the court only had to determine whether DOJ's interpretation of its

regulation was "plainly erroneous or inconsistent with the regulation." *Id.* at 1117 (citing *Auer*, 519 U.S. at 461). But the Ninth Circuit went beyond an *Auer* analysis when it credited expert witness testimony and reasoned that serious-risk claims should be allowed to proceed due to the "irreversible" nature of institutionalization for some individuals. *See id.* at 1118. The Ninth Circuit also undertook its own analysis in considering other courts' decisions holding that serious-risk claims are cognizable. *M.R.*, 663 F.3d at 1118. The court reasoned that those decisions were consistent with "clinical reality." *Id.* And those decisions supported the development of the court's own view separate from DOJ's view, as none of them deferred to DOJ's interpretation of the integration regulation. *See V.L. v. Wagner*, 669 F. Supp. 2d 1106, 1119-20 (N.D. Cal. 2009); *Brantley v. Maxwell-Jolly*, 656 F. Supp. 2d 1161, 1170-71 (N.D. Cal. 2009); *Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175, 1181-82 (10th Cir. 2003).

Indeed, the Ninth Circuit in *M.R.* relied in part on principles of *Skidmore* respect, further showing that *M.R.* did not turn on *Auer* deference. Like the Supreme Court in *Olmstead,* the court declared that "[w]e afford DOJ's view [as to the proper interpretation of the statute] considerable respect." *M.R.*, 663 F.3d at 1117 (citing *Olmstead*, 527 U.S. at 597-98) ("Because the Department is the agency directed by Congress to issue regulations implementing Title II [of the ADA], its views warrant respect."). Importantly, this approach does not demand the wholesale adoption of agency interpretations; instead, it guides courts to treat agency interpretations as informative. *See Olmstead*, 527 U.S. at 598 (citing *Skidmore v. Swift & Co.*, 323 U.S. 134, 139-40 (1944)).[7]

Similarly, other circuits' conclusions that the ADA permits serious-risk claims do not hinge on *Auer* deference. *See*, *e.g.*, *Fisher*, 335 F.3d 1175 at 1181-82 (containing no discussion of *Auer* or DOJ's interpretation of its integration regulation); *Pashby*, 709

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[7] In *Skidmore*, the Supreme Court held that an agency's interpretations of a statute, "while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance." *Skidmore v. Swift & Co.,* 323 U.S. 134, 140 (1944).

F.3d at 321-22 (containing no discussion of *Auer* and affording DOJ's interpretation of the statute respect as instructed by *Olmstead*); *Waskul*, 979 F.3d at 460-61 (choosing not to apply *Auer* and affording DOJ's interpretation respect); *Davis*, 821 F.3d at 263 (finding "DOJ's and [its] sister circuits' interpretation . . . both consistent with the integration mandate and well-reasoned"). *Kisor* did not abrogate these decisions either, and they bolster the Ninth Circuit's reasoning in *M.R.*

The single case that Defendants cite to advance their argument that the integration mandate does not permit serious-risk claims, *United States v. Mississippi*, 82 F.4th 387, 395-96 (5th Cir. 2023), is wrong and inapplicable in any event. In *Mississippi*, that court held that, on the record there, a serious risk that individuals with serious mental illness would be unnecessarily hospitalized was not actionable. 82 F.4th at 392-398. In reaching that incorrect conclusion, however, *Mississippi* did not grapple with the statutory and regulatory arguments advanced above. Regardless, *Mississippi* concluded that it "need not say" whether its six sister circuits were "wrong" to hold that Title II prohibits the "serious risk" of unnecessary institutionalization, stating their decisions are "significantly factually distinguishable." 82 F.4th at 396. Moreover, *Mississippi* cannot be read to foreclose all integration claims brought on behalf of individuals who are at risk of unnecessary institutionalization because the Fifth Circuit subsequently instructed that a plaintiff who had not received the full extent of services she had requested "still ha[d] a live claim that she is at imminent risk of being forced into an institution." *Harrison*, 103 F.4th at 1136.

Thus, Defendants' effort to eliminate serious-risk claims under Title II of the ADA should be rejected.

**B. A Plaintiff Alleging a Serious Risk of Needless Institutionalization Need Not Allege That They Seek Specific Community-Based Services That Also Exist in an Institution**

Defendants argue in the alternative that Plaintiffs have not alleged sufficient facts to show a serious risk of unnecessary institutionalization. County Defs.' Br. at 32-33. In particular, Defendants contend that, to make a serious-risk claim, Plaintiffs must identify

specific institutional services that could be provided in the community. County Defs.' Br. at 32-33 (rejecting as insufficient Plaintiffs' allegations that they lack "consistent, trauma-informed behavioral health services" and "necessary behavioral health services"). No such requirement exists under the statute, let alone at the pleading stage.

Rather, the Ninth Circuit and other courts have held that reductions in, or scarcity of, needed community-based services, standing alone, can be sufficient to show a serious risk of unnecessary institutionalization. *See, e.g.*, *M.R.*, 663 F.3d at 1111, 1113, 1115 (plaintiffs had shown serious risk where reduction in in-home personal care services critical to their health created a serious risk of unnecessary institutionalization); *Pashby*, 709 F.3d at 322 (consequences of termination of in-home personal care services showed plaintiffs were at serious risk); *Waskul*, 979 F.3d at 461-62 (lack of sustained, long-term care was sufficient to show serious risk); *Brantley*, 656 F. Supp. 2d at 1171 (plaintiffs showed that, by limiting the availability of adult day health care services, state placed plaintiffs at serious risk); *V.L.*, 669 F. Supp. 2d at 1119-20 (determining sufficient showing of risk where plaintiffs, due to unmet in-home care needs, faced decline in health and placement in institutions). Contrary to Defendants' argument, these courts found that the plaintiffs had shown a serious risk of unnecessary institutionalization *without* requiring them to show that the community-based services they sought were available in an institution.

Defendants' reliance on *Townsend v. Quasim*, 328 F.3d 511 (9th Cir. 2003) is misplaced. In *Townsend*, the Ninth Circuit evaluated whether the community-based services the plaintiffs sought to obtain constituted *new* services and thus were not "reasonable" modifications that did not "fundamentally alter" the defendants' program. 328 F.3d at 517. The court rejected that argument, reasoning that the public entity already provided comparable services in institutional settings. *See id.* ("If services were determined to constitute distinct programs based solely on the location in which they were provided, *Olmstead* and the integration regulation would be effectively gutted. States could avoid compliance with the ADA simply by characterizing services offered

in one isolated location as a program distinct from the provision of the same services in an integrated location."). Defendants improperly invert *Townsend* to assert that, because a public entity may not avoid liability by characterizing the services a plaintiff seeks in the community as new services when the entity already provides them in an institution, a plaintiff must allege with specificity the community-based services they seek that are also available to them in an institution to show a serious risk of unnecessary institutionalization. *See* County Defs.' Br. at 32-33. *Townsend* does not support that proposition.

Instead, in the context of determining whether the requested modification is "reasonable" or, instead, a "fundamental alteration"—a different issue from serious risk of needless institutionalization that is typically resolved after the pleading stage— the Ninth Circuit and other courts have upheld integration claims where a plaintiff alleges that the services they seek in a community setting are functionally similar to those the public entity already provides in institutional settings. *See, e.g.*, *Townsend*, 328 F.3d at 517 (determining that services described in terms of the needs the services would address—e.g., "assistance in dressing, bathing, preparing meals, taking medications"—were functionally the same services, whether they were provided in the community or an institution); *Radaszewski ex rel. Radaszewski v. Maram*, 383 F.3d 599, 610-11 (7th Cir. 2004) (finding that monitoring and skilled assistance did not need to be provided in an institution by a nurse to be considered "the equivalent" of the private-duty nursing care that plaintiff received at home).

As the Seventh Circuit explained in *Radaszewski*, "so long as it is possible for the plaintiff to show that the services he seeks to receive at home are, in substance, already provided in the institutional setting, then the State is not entitled to judgment on the pleadings based on the argument that the services would take on a different form or method if provided in a community setting." *Radaszewski*, 383 F.3d at 611. Indeed, limiting plaintiffs' relief to specific services provided in an institution would undermine plaintiffs' right to seek reasonable modifications of the service system under the ADA.

*See Radaszewski*, 383 F.3d at 611 ("[T]he integration mandate may well require the State to make reasonable modifications to the form of existing services in order to adapt them to community integrated settings . . . . If variations in the way services are delivered in different settings were enough to defeat a demand for more community-integrated care, then the integration mandate of the ADA and the Rehabilitation Act would mean very little.").[8]

### C. A Plaintiff Need Not Allege That a Treatment Professional Determined That an Integrated Setting Is Appropriate

Defendants assert that Plaintiffs' integration claim cannot succeed unless a treatment professional has determined that community-based services are appropriate. County Defs.' Br. at 28-29, 32. But while a plaintiff asserting an integration-mandate claim must show that receiving community-based services is appropriate, *see Olmstead*, 527 U.S. at 607, there is no requirement under the statute that a treatment professional provide that determination. Rather, a treatment professional's determination is a sufficient—but not a necessary—way to show that a plaintiff could appropriately be served in a community setting.

*Olmstead* provided no analysis of this issue because the plaintiffs there had received determinations from state treatment professionals that community placement was appropriate. *See Olmstead*, 527 U.S. at 602-03. Since *Olmstead*, the Ninth Circuit and other courts have found that there are multiple ways, apart from opinions from treatment professionals, to show that people in segregated placements can be served appropriately in community settings. *See, e.g.*, *Townsend*, 328 F.3d at 514, 516

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[8] Defendants cite a district court's unreported opinion to assert that Plaintiffs must allege both that they seek specific community-based services that are available in an institution and also that treatment professionals have determined those services to be appropriate for them. County Defs.' Br. at 28, 32-33, citing *Disability Rights California v. County of Alameda*, No. 20-cv-05256-CRB, 2021 WL 212900, at *10-11 (N.D. Cal. Jan. 21, 2021). But that opinion provides little analysis justifying the first conclusion, which is at odds with *Townsend*'s framing of the inquiry as turning on needs, not specific services, *Townsend*, 328 F.3d at 517. As to the second contention, it misreads *Olmstead*, as discussed below.

(community-based services were appropriate where plaintiff had previously received and benefited from such services); *Radaszewski*, 383 F.3d at 612-14 (plaintiff's allegations that he had lived and received services at home for years permitted inference of appropriateness); *Disability Advocates, Inc. v. Paterson*, 653 F. Supp. 2d 184, 245-46 (E.D.N.Y. 2009) (evidence that individuals with similar disabilities were living and receiving services in integrated settings demonstrated appropriateness), *vacated on other grounds sub nom. Disability Advocates, Inc. v. N.Y. Coal. for Quality Assisted Living, Inc.*, 675 F.3d 149, 162-63 (2d Cir. 2012); *see also Jeremiah M.*, 695 F. Supp. 3d at 1108 (allegation that plaintiffs remained institutionalized solely due to lack of community-based alternatives suggested appropriateness); *Z.S. v. Durham Cnty.*, No. 1:21-CV-663, 2022 WL 673649, at *4 (M.D.N.C. Mar. 7, 2022) (allegations that options for community placement were available and that institutional care was no better for plaintiff sufficed to show appropriateness).

Even if a treatment professional's determination were ultimately needed, a plaintiff need not allege at the pleading stage 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). 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 M.J.*, 401 F. Supp. 3d 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).

### D. A Public Entity's Oversight and Administration of Its Service System May Be Sufficient to Show Causation

Defendants assert that Plaintiffs have failed to state an integration claim against the State Defendants because Plaintiffs have not alleged sufficient facts to show causation. Causation is a fact-specific inquiry. However, Defendants err to the extent that they argue that (1) allegations of a public entity's oversight and administration can never be sufficient to state a claim against that entity; and (2) the causal chain is broken when non-State entities make individual placement decisions. *See* State Defs.' Br. at 25-26.

Rather, courts have held that, to state a claim, it is sufficient for a Title II plaintiff to allege that the defendant "provides, administers and/or funds the existing service system" and/or that the defendant "utilized criteria or methods of administration" that led to unnecessary segregation. *See Day v. District of Columbia*, 894 F. Supp. 2d 1, 22-23 (D.D.C. 2012); *see also* 28 C.F.R. § 35.130(b)(1), (3) (public entities may not discriminate "directly or through contractual . . . or other arrangements"). In fact, a State can be liable under Title II for its discriminatory administration of services even if it is not directly operating the services at issue. *See, e.g.*, *Timothy B. v. Kinsley*, No. 1:22-cv-1046, 2024 WL 1350071, at *6 (M.D.N.C. Mar. 29, 2024) (rejecting defendant state entity's argument that plaintiffs needed to show individual plaintiffs' placements were the result of the entity's actions where plaintiffs' claims were "based on [the entity's] administrative and supervisory role overseeing [the state's] child welfare system"); *M.G. v. N.Y. State Off. of Mental Health*, 572 F. Supp. 3d 1, 12-13 (S.D.N.Y. 2021) (finding that plaintiffs adequately pled causation despite defendant state entity's argument that plaintiffs' injuries were "more directly caused by deficiencies on the part of the private or municipal organizations"); *Disability Advocates, Inc. v. Paterson*, 598 F. Supp. 2d 289, 317-18 (E.D.N.Y. 2009) (holding that the State, through its "statutory and regulatory framework," may be held liable for its use of private entities to deliver services); *cf. Katie A., ex rel. Ludin v. Los Angeles Cnty.*, 481 F.3d 1150, 1159 (9th Cir.

2007) (holding under the Medicaid Act that "[e]ven if a state delegates the responsibility to provide treatment to other entities such as local agencies or managed care organizations, the ultimate responsibility to ensure treatment remains with the state").

## IV. CONCLUSION

For the foregoing reasons, the United States submits that: (1) a serious risk of unnecessary institutionalization due to disability is actionable under Title II of the ADA and Section 504 of the Rehabilitation Act; (2) individuals bringing serious-risk claims need not allege they seek specific community-based services that are also available in an institution; (3) a determination of the appropriateness of community-based services need not come from a treatment professional; and (4) an entity can be liable under Title II or Section 504 for the administration of a service system that leads to unnecessary institutionalization, even when the relevant services are provided by other entities.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for the United States certifies that this brief contains 5,640 words, which:

_X_ complies with the word limit of L.R. 11-6.1.

___ complies with the word limit set by court order.

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