No.

In the Supreme Court of the United States

KIRBY INGRAM,

Petitioner,

v.

LOUIS KUBIK, BLAKE DORNING & KEVIN TURNER,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether vicarious liability is available under Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.*, as three courts of appeals have held, or whether such liability is unavailable, as held by two courts of appeals, including the Eleventh Circuit below.

RELATED PROCEEDINGS

Ingram v. *Kubik*, No. 20-11310
(11th Cir. Apr. 7, 2022)

Ingram v. *Kubik*, No. 19-cv-741
(N.D. Ala. Mar. 12, 2020)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Kirby Ingram respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the Eleventh Circuit (App., *infra*, 1a-38a) is reported at 30 F.4th 1241. The district court's opinion (App., *infra*, 39a-58a) is unreported, but is available at 2020 WL 1235478.

JURISDICTION

The judgment of the court of appeals was entered on April 7, 2022. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Title II of the Americans with Disabilities Act provides, in relevant part:

> [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.

42 U.S.C. § 12132. The Act further provides:

> The remedies, procedures, and rights set forth in [the Rehabilitation Act] shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.

Id. § 12133.

STATEMENT

Petitioner Kirby Ingram, an Iraq war veteran with post-traumatic stress disorder, was cruelly and unnecessarily body-slammed by sheriff's deputies while he was experiencing a mental-health crisis, requiring emergency surgery to replace one vertebra in his spine with a metal rod and to fuse two others.

When Ingram sued for violations of his rights under the Americans with Disabilities Act (ADA), however, the Eleventh Circuit held that the sheriff, in his official capacity, could not be held vicariously liable under Title II of the ADA for the wrongful acts of his employees.

That decision directly conflicts with the holdings of at least three other courts of appeals—as the Eleventh Circuit panel below explicitly recognized. See App., *infra*, 32a-33a ("[T]he courts of appeals are divided. Some have held that vicarious liability is available under Title II. The Sixth Circuit recently held the opposite. We agree with the Sixth Circuit.") (citations omitted).

This case thus squarely presents a straightforward yet vitally important question of federal law on which the circuits are expressly and intractably split: whether vicarious liability is available under Title II of the ADA. The Court should grant certiorari to answer that question, restoring national uniformity in the application of this critical civil rights statute.[1]

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[1] The same question is also presented by the currently pending petition for certiorari in *Jones* v. *City of Detroit*, No. 21-1292, which is the Sixth Circuit case on which the court of appeals panel here relied.

A. Legal Background

Enacted in 1990 in an exercise of Congress's power under Section 5 of the Fourteenth Amendment, the Americans with Disabilities Act aimed "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities," along with "clear, strong, consistent, enforceable standards addressing [such] discrimination." Americans with Disabilities Act of 1990, Pub. L. 101-336, § 2(b)(1), (2), 104 Stat. 327, 329; see also *id.* § 2(b)(4) (invoking "the power to enforce the fourteenth amendment").

To that end, the statute provides that "no qualified individual with a disability shall, by reason of such disability, * * * be denied the benefits of the services * * * of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. And it sets up a scheme of private "[e]nforcement" by incorporating "[t]he remedies, procedures, and rights set forth in" Section 505 of the Rehabilitation Act—an earlier statute prohibiting disability discrimination in programs receiving federal funds. *Id.* § 12133. The Rehabilitation Act in turn incorporates "[t]he remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964." 29 U.S.C. § 794a(a)(2); see *United States* v. *Georgia*, 546 U.S. 151, 154 (2006) (explaining that through this dual incorporation, "Title II authorizes suits by private citizens for money damages against public entities that violate § 12132").

B. Factual and Procedural Background

1. Petitioner Kirby Ingram "is an Iraq War veteran who suffers from post-traumatic stress disorder." App., *infra*, 3a. "In October 2017, while suffering from a mental-health crisis, Ingram cut his wrist with a knife at his home. His girlfriend called the Veterans

Affairs suicide hotline, which contacted law enforcement." *Ibid.*

When sheriff's deputies arrived at the scene, Ingram "was calm," and once the officers "confiscated the knife with which Ingram had cut himself * * * the deputies knew he was unarmed." App., *infra*, 3a. Ingram repeatedly told the officers that "he would go voluntarily" if he was under arrest. *Id* at 4a. Again, "the deputies knew that Ingram was unarmed and posed no threat to them." *Id.* at 5a.

Despite knowing that Ingram posed no threat, "[w]ithout warning, [Deputy] Kubik * * * grabbed Ingram under his armpits, picked Ingram up, and slammed Ingram to the ground head first, causing Ingram to suffer a serious neck injury." App., *infra*, 5a. Ingram was taken to the hospital, where "[a] surgeon removed Ingram's C-2 vertebra and replaced it with a metal rod. The surgeon also fused Ingram's C-3 and C-4 vertebrae." *Ibid.*

2. Ingram filed a Section 1983 civil rights action, bringing Fourth Amendment seizure and excessive force claims against Deputy Kubik and Blake Dorning, who was the Sheriff of Madison County, Alabama, at the time of the encounter. App., *infra*, 7a; see generally D. Ct. Dkt. 1 (complaint). As relevant here, the complaint also named Kevin Turner, in his official capacity as the current Madison County Sheriff, as a defendant in a claim under Title II of the ADA. App., *infra*, 7a-8a.[2]

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[2] The ADA's prohibition on disability discrimination has been held by the lower courts to govern encounters between police and disabled individuals like Mr. Ingram (see, *e.g.*, *Haberle* v. *Troxell*, 885 F.3d 170, 180-181 (3d Cir. 2018)), though this Court has declined to weigh in on that question (see *City & Cty. of S.F.* v. *Sheehan*, 575 U.S. 600, 609-610 (2015)).

3. The district court dismissed the complaint. As to the Section 1983 claims, the court found the deputies' seizure of Ingram justified, and held Deputy Kubik entitled to qualified immunity with respect to excessive force. App., *infra*, 8a-9a. And as to the ADA claim, the district court concluded that the statute requires "deliberate indifference" by the defendant government entity—that is, "actual knowledge of discrimination in the entity's programs and fail[ure] adequately to respond"—and that Ingram's allegations regarding Sheriff Turner failed to meet that standard. App., *infra*, 9a (quoting *Silberman* v. *Miami Dade Transit*, 927 F.3d 1123, 1134 (11th Cir. 2019)).

4. The court of appeals reversed the district court's grant of qualified immunity as to Ingram's excessive force claim, but affirmed the district court's dismissal of the ADA claim. See generally App., *infra*, 1a-38a.

Ingram had argued on appeal that any lack of allegations of deliberate indifference was immaterial because Turner, in his official capacity as Sheriff, is vicariously liable for the tortious or discriminatory actions of his employees. See App., *infra*, 31a-32a; see also *ibid.* (noting that, prior to this case, "the availability of respondeat superior for Title II . . . claims remain[ed] an open question" in the Eleventh Circuit) (quoting *Silberman*, 927 F.3d at 1134 n.6).

Writing for the panel, Judge Pryor explicitly observed that "the courts of appeals are divided" as to whether "vicarious liability is available under Title II." App., *infra*, 32a; see also *id.* at 32a-33a ("Some courts have held that vicarious liability is available * * *. The Sixth Circuit recently held the opposite.") (collecting cases).

The court then went on to deepen that recognized split among the courts of appeals, siding with the

Sixth Circuit to hold that "[u]nder Title II, vicarious liability is unavailable." App., *infra*, 37a. The court therefore affirmed the district court's dismissal of Ingram's ADA Title II claim. *Id.* at 38a.

REASONS FOR GRANTING THE PETITION

The Court should grant certiorari to resolve a persistent and acknowledged circuit split over an important question of law: whether Title II of the ADA permits recovery under a theory of vicarious liability.

A. The circuits are split as to vicarious liability for ADA claims.

As Judge Pryor explicitly recognized below, "the courts of appeals are divided" over whether "vicarious liability is available under Title II." App., *infra*, 32a. Specifically, at least three circuits hold that such liability is available. Two circuits disagree. And this Court has previously "decline[d] to" "decide[]" the issue, "in the absence of adversarial briefing." *City & Cty. of S.F.* v. *Sheehan*, 575 U.S. 600, 610 (2015). It should take this opportunity to do so now.

1. As Judge Pryor noted, the **Fourth, Fifth,** and **Ninth Circuits** have all held that vicarious liability is available under Title II of the ADA. See *Rosen* v. *Montgomery Cty.*, 121 F.3d 154, 157 n.3 (4th Cir. 1997) ("[W]e reject the County's first argument that there is no respondeat superior liability under the ADA * * *. Under the ADA and similar statutes, liability may be imposed on a principal for the statutory violations of its agent."); *T.O.* v. *Fort Bend Indep. Sch. Dist.*, 2 F.4th 407, 417 (5th Cir. 2021) ("[A] public entity may be held vicariously liable for the acts of its employees under" the ADA) (citing *Delano-Pyle* v. *Victoria Cty.*, 302 F.3d 567, 574-575 (5th Cir. 2002)); *Duvall* v. *Cty. of Kitsap*, 260 F.3d 1124, 1141 (9th Cir. 2001) ("When a plaintiff brings a direct suit under

* * * Title II of the ADA against a municipality (including a county), the public entity is liable for the vicarious acts of its employees."); accord, *e.g.*, *Borawick* v. *City of L.A.*, 793 F. App'x 644, 646 (9th Cir. 2020) (similar). As the Ninth Circuit explained, vicarious liability is "entirely consistent with the policy of [the ADA], which is to eliminate discrimination against the handicapped," and "the historical justification for exempting municipalities from *respondeat superior* liability does not apply" to ADA claims. *Duvall*, 260 F.3d at 1141 (quoting *Bonner* v. *Lewis*, 857 F.2d 559, 566-567 (9th Cir. 1988)).

District courts within circuits that have not taken an explicit position on the question presented have also held that vicarious liability applies. See, *e.g.*, *A.V.* v. *Douglas Cty. Sch. Dist. RE-1*, __ F. Supp. 3d ___, 2022 WL 504138, at *9 (D. Colo. Feb. 18, 2022); *A.K.B.* v. *Indep. Sch. Dist. 194*, 2020 WL 1470971, at *9-12 (D. Minn. Mar. 26, 2020); *Mapp* v. *Bd. of Trs. of Cmty. Coll. Dist. No. 508*, 2016 WL 4479560, at *4 (N.D. Ill. Aug. 25, 2016).

2. By contrast, the **Sixth Circuit**, as well as the **Eleventh Circuit** below, hold that vicarious liability is *not* available. See App., *infra*, 37a-38a; *Jones* v. *City of Detroit*, 20 F.4th 1117, 1118 (6th Cir. 2021) ("Because vicarious liability is not available for claims under Title II of the Americans with Disabilities Act, we affirm."); but see *id.* at 1123-1127 (Moore, J., dissenting).

3. At least one other court of appeals has noted the circuit split, and assumed without deciding that vicarious liability applies. *Gray* v. *Cummings*, 917 F.3d 1, 17 (1st Cir. 2019) ("[W]hether a public entity can be vicariously liable for money damages under Title II of the ADA * * * is an open question.") (collecting authorities from the circuit split).

And this Court has observed that it "ha[s] never decided whether" vicarious liability is available for Title II claims, and "decline[d] to do so" in a previous case because "the parties agree[d]" that the doctrine did apply. *Sheehan*, 575 U.S. at 610. The Court should take this opportunity to decide the question left unaddressed in *Sheehan*, and resolve this widely acknowledged split among the circuits.

B. This is an ideal vehicle to address an important question of federal law.

Not only are the circuits deeply split over the question presented, but that question is also an extremely important one. See, *e.g.*, *Nasrallah* v. *Barr*, 140 S. Ct. 1683, 1689 (2020) ("In light of the Circuit split on this important question of federal law, we granted certiorari.").

As noted, the Americans with Disabilities Act is a foundational civil rights statute, designed to provide both "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and "clear, strong, consistent, enforceable standards addressing [such] discrimination." ADA § 2(b)(1), (2), 104 Stat. at 329. Yet with the question presented left undecided by this Court, the scope of those ostensibly "consistent * * * standards" varies dramatically from circuit to circuit. In the Fourth, Fifth, and Ninth Circuits, an aggrieved individual can recover from a government entity for discrimination perpetrated by its agents, while in the Sixth and Eleventh Circuits, recovery may only be had if the entity itself acted with deliberate indifference to that discrimination. Compare, *e.g.*, *Duvall*, 260 F.3d at 1141, with App., *infra*, 37a-38a. Such regional discrepancies are a far cry from the "clear and comprehensive national mandate" Congress intended. ADA

§ 2(b)(1), 104 Stat. at 329. The Court should act to restore national uniformity in the application of this important remedial statute.

What is more, this case presents an ideal vehicle to effect that standardization of federal law. The question is cleanly presented and dispositive of Ingram's ADA claim: The court of appeals below affirmed the dismissal of that claim solely on the basis of its legal holding that Title II does not permit vicarious liability. See App., *infra*, 30a-38a. And because this case was decided at the motion-to-dismiss stage, there are no factual complications to cloud the pure issue of law presented here.

C. The decision below is wrong.

Finally, the Eleventh Circuit was wrong to hold, in conflict with three other courts of appeals, that vicarious liability is unavailable in suits under Title II of the ADA. The reasons why are well articulated by Judge Moore's dissenting opinion in the Sixth Circuit's *Jones* case. See generally *Jones*, 20 F.4th at 1123-1127 (Moore, J., dissenting).

To begin, "the Supreme Court has long looked to principles of agency and tort law when analyzing remedial provisions of statutes intended to remedy discrimination." *Jones*, 20 F.4th at 1123 (Moore, J., dissenting) (collecting cases); see, *e.g.*, *Comcast Corp.* v. *Nat'l Ass'n of African Am.-Owned Media*, 140 S. Ct. 1009, 1016 (2020) ("[W]e generally presume that Congress legislates against the backdrop of the common law."). More specifically, "vicarious liability[] is a 'basic agency principle[]' that the Court routinely uses in its interpretation of civil rights statutes." *Jones*, 20 F.4th at 1123 (Moore, J., dissenting) (quoting *Faragher* v. *City of Boca Raton*, 524 U.S. 775, 791 (1998)). The baseline presumption that vicarious liability

applies thus controls "absent an indication to the contrary in the statute itself." *Univ. of Tex. Sw. Med. Ctr.* v. *Nassar*, 570 U.S. 338, 347 (2013). And there is no such indication in Title II.

In rejecting that straightforward conclusion, the panel below found this Court's decision in *Gebser* v. *Lago Vista Independent School District*, 524 U.S. 274 (1998), "control[ling]." App., *infra*, 34a-38a. *Gebser* held that Title IX—the civil rights statute outlawing sex discrimination by educational programs receiving federal funds—did not provide for vicarious liability, based largely on its nature as Spending Clause legislation. 524 U.S. at 284-291; see pages 11-13, *infra*. The panel below reasoned that because Title IX is largely parallel to Title VI, Title VI must also preclude vicarious liability. App., *infra*, 35a-36a. And since Title II indirectly incorporates "[t]he remedies, procedures, and rights set forth in" Title VI, the argument goes, vicarious liability must be unavailable under Title II as well. 42 U.S.C. § 12133; see App., *infra*, 36a. Indeed, this Court has applied that same chain of logic to hold that punitive damages are not available under Title II. See *Barnes* v. *Gorman*, 536 U.S. 181, 189-190 (2002).

This argument suffers from a fatal flaw, however: Unlike the punitive damages at issue in *Barnes*, "respondeat superior is not a remedy. Nor is respondeat superior a right or procedure." *Jones*, 20 F.4th at 1126 (Moore, J., dissenting) (collecting authorities). Rather, vicarious liability is "a *theory* of liability" that "may affect *who* is liable" or "how a plaintiff frames a case to the jury[,] but does not change the relief a plaintiff is seeking ultimately"—compensatory damages. *Ibid.*

The ADA's incorporation of the "[t]he remedies, procedures, and rights" available in Title VI (42 U.S.C. § 12133) thus does *not* incorporate the

unavailability of vicarious liability under Title VI, and the background presumption of respondeat superior continues to govern. With that clarification, the Eleventh Circuit's reasoning collapses.

Nor is *Gebser*'s construction of Title IX persuasive authority for the interpretation of the ADA's Title II. As the panel below recognized, because Spending Clause legislation like Title IX is essentially "in the nature of a contract" (*Pennhurst State Sch. & Hosp.* v. *Halderman*, 451 U.S. 1, 17 (1981)), the "central concern" for courts construing such legislation "is with ensuring that the entity receiving funds has 'notice' that it will be liable for noncompliance with the condition" (App., *infra*, 35a (quoting *Gebser*, 524 U.S. at 287)). See also *Gebser*, 524 U.S. at 287 ("When Congress attaches conditions to the award of federal funds under its spending power, as it has in Title IX and Title VI, we examine closely the propriety of private actions holding the recipient liable in monetary damages for noncompliance with the condition.") (citation omitted).

Of course, this consideration is inapplicable to Title II of the ADA, which—like the Title VII provisions that the *Gebser* Court explicitly distinguished—"is framed in terms not of a condition but of an outright prohibition." *Gebser*, 524 U.S. at 286. Thus, not only does *Gebser* not foreclose vicarious liability through the ADA's incorporation of Title VI's "remedies" (42 U.S.C. § 12133), but its reasoning is constrained to statutes conditioning federal payments—which Title II of the ADA is not. If anything, *Gebser*'s discussion of the differences between Title VII and Title IX suggest that the ADA *does* make vicarious liability available, just like the Title VII provisions with which it shares the features *Gebser* found relevant. *Gebser*, 524 U.S. at 286; see *Faragher*, 524 U.S. at 791

(holding that vicarious liability is available under Title VII).

That *Gebser*'s reasoning reaches no further than Spending Clause legislation was confirmed by the Court just this Term. In *Cummings* v. *Premier Rehab Keller, P.L.L.C.*, No. 20-219, the Court reiterated that four anti-discrimination statutes framed as conditions on federal funding—Title VI, Title IX, the Rehabilitation Act, and certain provisions of the Affordable Care Act—are to be interpreted in parallel precisely because they are Spending Clause statutes:

> Unlike ordinary legislation, which "imposes congressional policy" on regulated parties "involuntarily," Spending Clause legislation operates based on consent: "in return for federal funds, the recipients agree to comply with federally imposed conditions." For that reason, the "legitimacy of Congress' power" to enact Spending Clause legislation rests not on its sovereign authority to enact binding laws, but on "whether the recipient voluntarily and knowingly accepts the terms of that 'contract.'"

Cummings, slip op. at 4 (first quoting *Pennhurst*, 451 U.S. at 16, 17, then quoting *Barnes*, 536 U.S. at 1386) (citations omitted; alterations incorporated).

Unlike these four Spending Clause statutes, Title II—enacted under Congress's Fourteenth Amendment authority—very much *does* "impose[] congressional policy on regulated parties involuntarily" (*Cummings*, slip op. at 4), making the key

considerations underlying *Gebser*, *Barnes*, and their progeny inapposite.[3]

The default rule therefore applies: The "basic agency principle[]" of vicarious liability is incorporated into Title II of the ADA. *Faragher*, 524 U.S. at 791. The Court should grant certiorari to affirm this result, thus restoring national uniformity in the interpretation of this important federal statute.

CONCLUSION

The Court should grant the petition.

Respectfully submitted.

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[3] The panel below dismissed these critical differences between the ADA and the Spending Clause statutes based on a statement in *Barnes* that, in light of the ADA's express incorporation of Title VI's "remedies," the ADA's "status as a non Spending Clause tort statute" is "quite irrelevant." App., *infra*, 37a (quoting *Barnes*, 536 U.S. at 190 n.3) (quotation marks omitted). But as discussed above, vicarious liability is *not* a "remed[y]"—unlike the punitive damages at issue in *Barnes*—making this observation inapplicable here. Pages 10-11, *supra*, see *Jones*, 20 F.4th at 1126 (Moore, J., dissenting).