No. 24-____

In the Supreme Court of the United States

LATRISHA WINDER, ET AL., PETITIONERS

v.

JOSHUA M. GALLARDO, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Title II of the Americans with Disabilities Act of 1990 (ADA) prohibits public entities, including local law-enforcement agencies, from discriminating against qualified individuals with disabilities. 42 U.S.C. § 12132. Title II requires all public entities to "make reasonable modifications in policies, practices, or procedures" to accommodate individuals with disabilities. 28 C.F.R. § 35.130(b)(7)(i); *see Tennessee v. Lane*, 541 U.S. 509, 531-32 (2004).

The courts of appeals have openly split over how Title II's antidiscrimination rules apply during police officers' encounters with individuals with disabilities. The Fourth, Ninth, and Eleventh Circuits hold that Title II applies to all police encounters, and any exigent circumstances that officers face during those encounters simply inform whether a requested accommodation is reasonable under the circumstances. *See Seremeth v. Board of County Commissioners*, 673 F.3d 333, 336-37 (4th Cir. 2012); *Sheehan v. City & County of San Francisco*, 743 F.3d 1211, 1232 (9th Cir. 2014); *Bircoll v. Miami-Dade County*, 480 F.3d 1072, 1086 (11th Cir. 2007). The Fifth Circuit alone, by contrast, holds that Title II categorically does not apply when police face exigent circumstances. *Hainze v. Richards*, 207 F.3d 795, 801 (5th Cir. 2000). The Court previously granted certiorari to resolve this split, but it never reached the issue because the petitioner changed positions at the merits stage. *City & County of San Francisco v. Sheehan*, 575 U.S. 600, 610 (2015).

The question presented is whether Title II of the ADA applies when law-enforcement officers face exigent circumstances during their encounters with individuals with disabilities.

PARTIES TO THE PROCEEDING

Petitioners are Latrisha Winder, in her individual capacity, on behalf of J.W. (a minor), and as a representative of the estate of Stephen Wayne Winder (deceased); Lily Winder; Stephen Tyler Winder; and Kolene Winder, on behalf of E.W. (a minor). Petitioners were Plaintiffs-Appellants below.

Respondents Joshua M. Gallardo; Robert Travis Babcock; and Young County, Texas, were Defendants-Appellees below.

RELATED PROCEEDINGS

United States Court of Appeals (5th Cir.):

Winder, et al. v. Gallardo, et al., No. 24-10017 (Sept. 27, 2024)

United States District Court (N.D. Tex.):

Winder, et al. v. Gallardo, et al., No. 7:23-cv-00059-O (Dec. 18, 2023)

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INTRODUCTION

This case presents an acknowledged circuit split over an important and outcome-determinative question of federal law: whether Title II of the Americans with Disabilities Act of 1990 (ADA) applies when law-enforcement officers face exigent circumstances during their encounters with individuals with disabilities. This Court has already granted certiorari to decide that question but dismissed it as improvidently granted because the petitioner changed its position at the merits stage. *See City & County of San Francisco v. Sheehan*, 575 U.S. 600, 610 (2015). This case gives the Court another opportunity to resolve that "important question," *id.*

Steve Winder was a 39-year-old man who suffered from and was being treated for depression. He became suicidal one day and threatened to shoot himself. Fearing for Steve's life, his wife—who was away at Army training—called the Young County Sheriff's Office and asked for help. Young County sent a rookie officer who was ill-equipped to handle the situation. Even though he knew that he was dispatched to conduct a welfare check on a suicidal man with a gun, the officer shot and killed Steve within seconds of seeing him because he thought Steve was holding a gun.

Steve's wife and four children (Petitioners) sued Young County under Title II of the ADA. They allege that the county discriminated against Steve on the basis of his disability, because the county failed to adopt policies that would have protected individuals, like Steve, experiencing mental-health crises. Petitioners allege that Young County could have reasonably accommodated Steve's disability—as Title II required, *see* 42 U.S.C. § 12132; 28 C.F.R. § 35.130(b)(7)(i)—by,

for example, sending a trained officer or a mental-health professional to conduct or accompany the officer conducting that welfare check.

But the district court dismissed Petitioners' ADA claim, and the court of appeals affirmed, on the basis of a so-called "exigent-circumstances exception" to Title II that applies in the Fifth Circuit, but nowhere else. Under that exception, plaintiffs may not bring ADA claims if police officers face exigent circumstances during an encounter with an individual with a disability. Thus, even though Petitioners allege that Young County violated the ADA by failing to have a policy for adequately conducting welfare checks in the first place, the courts below held that exigent circumstances that the responding officer faced—circumstances that themselves resulted from the county's failure—foreclosed ADA relief.

Three courts of appeals have expressly rejected an exigent-circumstances exception to Title II. Those courts hold that exigencies that police officers encounter do not make Title II inapplicable but instead inform whether requested accommodations are reasonable. And whether requested accommodations are reasonable is a fact-intensive question that usually will be for a jury to decide. This Court should grant review to bring the Fifth Circuit in line with the other courts of appeals so that Petitioners' ADA claim can move forward.

1. The courts of appeals have split 3–1 over whether Title II of the ADA applies when police officers interacting with disabled individuals face exigent circumstances. The Fourth, Ninth, and Eleventh Circuits hold that Title II applies to all police interactions. *See Seremeth v. Board of County*

Commissioners of Frederick County, 673 F.3d 333, 336-37 (4th Cir. 2012); *Sheehan v. City & County of San Francisco*, 743 F.3d 1211, 1232 (9th Cir. 2014); *Bircoll v. Miami-Dade County*, 480 F.3d 1072, 1086 (11th Cir. 2007). In those circuits, there is no exigent-circumstances exception to Title II. Rather, exigent circumstances inform whether a requested accommodation is reasonable.

The Fifth Circuit alone holds that Title II does not apply if police officers face exigent circumstances. *See Hainze v. Richards*, 207 F.3d 795, 801 (5th Cir. 2000). That court acknowledges that law-enforcement agencies have a *general* duty under Title II to reasonably accommodate individuals with disabilities, but that rule turns off in the Fifth Circuit whenever officers confront exigent circumstances.

The split is entrenched, and the Court should resolve it now. Indeed, a Fifth Circuit judge has noted that his own court has "created a categorical 'exigent circumstances' defense that appears nowhere in the text" of the ADA. *Wilson v. City of Southlake*, 936 F.3d 326, 333 (5th Cir. 2019) (Ho, J., concurring in the judgment). But, even so, the court of appeals denied en banc review below. App. 38a. This Court should step in now and bring the Fifth Circuit in line with the other courts of appeals.

2. The decision below is wrong. Title II applies to all law-enforcement operations with no exigent-circumstances exception. The statute's text makes clear that a local law-enforcement agency is a "public entity" covered by Title II. 42 U.S.C. § 12132. And the statute prohibits all "discrimination" by covered entities, regardless of context. *Id.* The ADA's legislative history and implementing regulations reinforce those

conclusions. Title II thus requires law-enforcement agencies to make accommodations for individuals with disabilities—but only if those accommodations are *reasonable*. That flexible standard necessarily accounts for whatever exigencies officers face, as the Fourth, Ninth, and Eleventh Circuits have all held.

The Fifth Circuit's reasoning for adopting an exigent-circumstances exception fails. For one thing, that exception is unmoored from Title II's text, as the Fifth Circuit has recognized. For another, the exception leads to illogical consequences, as this case demonstrates. Petitioners allege here that Young County discriminated against Steve by failing to have an adequate policy in place for conducting welfare checks on individuals with mental disabilities. For example, Young County could have had a policy of sending trained officers or mental-health professionals to conduct welfare checks on suicidal individuals. Young County's failure *preceded*—and in fact *caused*—whatever exigent circumstances the responding officer faced, but the Fifth Circuit held that those circumstances immunized Young County for its prior failures. That doesn't make sense. This Court should correct that error and the Fifth Circuit's outlier rule.

3. The question presented is important, and this case is an ideal vehicle for resolving it. Fatal encounters between individuals with mental disabilities and police officers are tragically common, and the exigent-circumstances exception immunizes local law-enforcement agencies from ADA liability even when reasonable accommodations could be made, contrary to Congress's command in Title II. And the split is outcome-determinative here: If this case had arisen in the Fourth, Ninth, or Eleventh Circuits, whether

Petitioners' requested accommodations are reasonable would have gone to a jury.

The Court should grant review.

OPINIONS BELOW

The court of appeals' opinion (App. 1a-14a) is reported at 118 F.4th 638. The district court's judgment (App. 15a-36a) is unpublished but available at 2023 WL 8721132.

JURISDICTION

The court of appeals entered its judgment on September 27, 2024, App. 1a, and denied a petition for rehearing en banc on November 5, 2024, App. 37a-38a. This Court's orders of January 19, 2025, and February 10, 2025, extended the time to file a petition for a writ of certiorari to March 10, 2025. *See* 28 U.S.C. § 2101(c). This petition is timely filed on March 10, 2025. The Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Section 12131 of Title 42, U.S. Code, provides, in relevant part:

(1) Public entity

The term 'public entity' means—

(A) any State or local government;

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

(C) the National Railroad Passenger Corporation, and any commuter authority (as defined in section 24102(4) of title 49).

(2) Qualified individual with a disability

The term 'qualified individual with a disability' means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

42 U.S.C. § 12131.

Section 12132 of Title 42, U.S. Code, provides:

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12132.

Subsection 35.130 of Title 28, Code of Federal Regulations, provides, in relevant part:

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

28 C.F.R. § 35.130(b)(7)(i).

STATEMENT

A. Background on the ADA

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). The statute defines a "disability" to include "a physical or mental impairment that substantially limits one or more major life activities of [an] individual." *Id.* § 12102(1)(A). "Major depressive disorder"—among other disorders—will "virtually always be found to impose a substantial limitation on a major life activity" and is, therefore, a disability covered by the ADA. 28 C.F.R. § 35.108(d)(2)(ii), (d)(2)(iii)(K). The ADA prohibits disability discrimination in both the private and public sectors, including in employment, 42 U.S.C. §§ 12111–12117; public accommodations, *id.* §§ 12181–12189; public transportation, *id.* §§ 12141–12165; and, as relevant here, activities conducted by public entities, *id.* §§ 12131–12134.

In particular, Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. The ADA defines a "public entity" to include "any State or local government" or "any department, agency, special purpose district, or other instrumentality of a State or States or local government." *Id.* § 12131(1)(A), (B). The Court has held that Title II "reaches a wide array of official conduct." *Tennessee v. Lane*, 541 U.S. 509, 530 (2004). And it "plainly covers state institutions *without* any exception that could

cast the coverage of prisons," for example, "into doubt," *Pennsylvania Department of Corrections v. Yeskey*, 524 U.S. 206, 209 (1998).

Title II imposes on public entities an "affirmative obligation to accommodate persons with disabilities." *Lane*, 541 U.S. at 533. Thus, under Title II's "reasonable modification requirement," *id.* at 532, a public entity must "make reasonable modifications in policies, practices, or procedures" in order 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," 28 C.F.R. § 35.130(b)(7)(i). To bring a claim under Title II, a plaintiff must show "(1) that he has a qualifying disability; (2) that he is being denied the benefits of services, programs, or activities for which the public entity is responsible, or is otherwise discriminated against by the public entity; and (3) that such discrimination is by reason of his disability." *Hale v. King*, 642 F.3d 492, 499 (5th Cir. 2011).

B. Factual and procedural background

This case concerns the fatal shooting of Steve Winder, a 39-year-old man with a wife and four children, by Joshua Gallardo, a rookie sheriff's deputy in Young County, Texas. App. 43a. Steve had a history of depression and was hospitalized eleven years before the shooting following a suicide attempt. App. 44a, 87a, 91a. His wife and children sued Young County for discriminating against Steve because of his disability, in violation of Title II.

1. A sheriff's deputy fatally shoots Steve Winder, a potentially suicidal man, while conducting a welfare check.

On the afternoon of June 27, 2021, Steve was swimming with family members in his pool. App. 45a-46a. He had also been drinking. *Id.* His wife, Latrisha Winder, was out of state at Army National Guard training. App. 45a. After accidentally bringing his phone into the pool, Steve went to find Latrisha's old phone. *Id.* On it, he discovered Facebook messages in which Latrisha's ex-husband asked her about getting back together. App. 45a-46a. Although Latrisha had rejected her ex-husband's advances, the messages upset Steve, and he called Latrisha about them. App. 46a. After that call, and knowing that Steve had a history of depression and alcohol abuse, Latrisha asked her mother, Lou Anne Phillips, who lived next door, to check on him. *Id.* Lou Anne did so and then returned home. *Id.*

Later that evening, Steve texted Latrisha photos of himself holding a gun to his head, along with a message that suggested he might commit suicide. *Id.* Latrisha informed her mother, who immediately went to check on Steve again. *Id.* Lou Anne found Steve in his bedroom and saw the gun, which Steve lawfully possessed, next to his bed. App. 48a. Steve and Lou Anne had an emotional conversation, during which Steve talked about forgiving Latrisha. *Id.*

Meanwhile, Latrisha called the Young County Sheriff's Office and asked them to conduct a welfare check on Steve. App. 49a. Latrisha told the dispatcher about the photos and Steve's suicidal message, and she informed them that Steve had a history of

depression, a prior suicide attempt, and was currently taking Prozac. App. 91a.

In response, Young County Sheriff's Deputies Simon Dwyer and Joshua Gallardo were dispatched to the Winder home to check on "a suicidal male with a gun." App. 49a-50a. Dwyer was a veteran officer with seventeen years' experience. App. 49a. Gallardo, in contrast, was a 23-year-old rookie who had worked for the Young County Sheriff for barely six months. App. 44a, 49a. His first job as a licensed peace officer was with another Texas county sheriff's office, a position he left involuntarily after three months. App. 45a. Before that, he was a jailer in yet another sheriff's office, where his performance evaluations reflect poor judgment and a lack of knowledge about office methods and procedures. App. 44a-45a. Dwyer and Gallardo drove to the Winder residence in separate patrol cars. App. 49a.

Gallardo arrived first. App. 50a. The complaint alleges, as Gallardo's bodycam footage corroborates, that Gallardo showed no urgency as he walked to and knocked on the Winders' back door. *Id.* Hearing no response, he strolled toward Lou Anne's home where he encountered Steve's niece, Breanna. *Id.* Gallardo asked her if Steve was around, and Breanna pointed toward the Winder home and went to tell her mother (in Lou Anne's house) that the police had arrived. App. 50a-51a.

Dispatch alerted Gallardo over his radio that Latrisha's mother (Lou Anne) "may be on the property trying to make contact with [Steve]." App. 51a (emphasis omitted). Indeed, Lou Anne was still with Steve, in his bedroom. App. 53a. A relative called her to tell her that the police had arrived, prompting Lou

Anne to instruct Steve to make sure the gun was out of sight. App. 51a, 53a.

Eventually, Breanna led Gallardo to the Winders' front porch. App. 51a. Gallardo asked Breanna to "open the door," but she instead knocked and waited. App. 52a. Breanna told Gallardo that "[t]hey're coming to the door," and she left the porch as Gallardo moved to the front door. *Id.*

Even though he didn't have a search warrant—and instead of waiting for Deputy Dwyer to arrive, contacting a supervisor, or waiting for someone to answer the door—Gallardo opened the front door himself. App. 53a. Gallardo announced, "Sheriff's Office," and then, a few seconds later, shouted, "Steve." App. 54a. Lou Anne appeared from the bedroom. *Id.* She calmly responded, "We're right here. Can I help you?" *Id.* She explained that she was "talking to [her] son-in-law" and that "[h]e's upset right now," but she indicated to Gallardo that they were all right. *Id.* Lou Anne saw Steve get up from the far corner of the bedroom with his gun. *Id.* Trying to de-escalate the situation, Lou Anne told Steve to put the gun down and then looked back toward Gallardo, telling him "[h]e's got a gun" and gesturing for Gallardo to back away from the front door. App. 54a-55a.

With his gun drawn, Gallardo announced into his radio, "He's got a gun. He's got a gun." App. 55a. He then yelled, "Put it down, man. Put it down," as he fired at Steve, who was now standing in his bedroom doorway. App. 55a-56a. The shot struck Steve in the chest. App. 67a-68a. Steve died from that gunshot wound. App. 56a.

Deputy Dwyer arrived on the porch less than a minute after the shooting. *Id.* While examining the

bedroom, Dwyer and Gallardo found Steve's gun on the opposite side of the bed from where Steve had been standing when he was shot—about 13 feet away. *Id.*; App. 72a. In the shooting's aftermath, Dwyer apologized to Lou Anne and (over the phone) to Latrisha, saying that he was "sorry [he] couldn't get here any quicker." App. 57a.

2. Steve's wife and children sue Young County, bringing a Title II claim for disability discrimination.

a. Latrisha, along with Steve's four children, sued Gallardo, Young County Sheriff Travis Babcock, and Young County in federal district court, invoking federal-question and civil-rights jurisdiction, 28 U.S.C. §§ 1331, 1343(a)(3), (4). App. 42a. Petitioners allege that Young County discriminated against Steve on the basis of his depression, in violation of Title II. App. 90a-93a. Petitioners also brought claims under 42 U.S.C. § 1983 for Gallardo's warrantless entry into the Winders' home and use of excessive force, in violation of the Fourth Amendment. App. 58a-90a.

The complaint alleges that Young County discriminated against Steve because of his depression. It alleges that the county failed to reasonably accommodate Steve's disability by refusing to adopt policies that would have protected individuals, like Steve, experiencing a mental-health crisis. App. 92a. For example, Young County failed to respond to Latrisha's request for a welfare check with a mental-health professional or an officer trained in well-established crisis-intervention techniques such as de-escalation, non-confrontation, and patience. *Id.*; App. 78a-79a.

The district court granted Respondents' motion to dismiss. App. 36a. As to the ADA claim, the court

reasoned that, under binding circuit precedent, "[t]he ADA does not reach an officer's conduct when they act in the face of exigent circumstances." App. 33a (citing *Hainze*, 207 F.3d at 801). And the court concluded that there were exigent circumstances here because "Deputy Gallardo was justified" in believing that Steve "posed a danger to his life and others." App. 35a.

b. The court of appeals affirmed.

Agreeing with the district court, the court of appeals explained that "[k]ey here is *Hainze v. Richards*," in which the Fifth Circuit held that "Title II of the ADA 'does not apply to an officer's on-the-street responses to reported disturbances.'" App. 13a-14a (quoting *Hainze*, 207 F.3d at 801). Indeed, the court continued, *Hainze* "foreclose[s] ADA claims where police officers face exigent circumstances." *Id.* And the court reasoned that "there were indeed exigent circumstances" because, in its view, "Steve 'was a suicide risk *and* had the means to act on it.'" App. 14a. Those "exigent circumstances … foreclose ADA relief." *Id.*

The court acknowledged that Petitioners alleged that Young County discriminated against Steve by failing to have policies in place that would "protect Steve's welfare" and by failing to "respond to threatened suicide calls with well-established crisis intervention techniques." App. 14a (alterations adopted). But the court nevertheless concluded that this theory was foreclosed by *Hainze*. It reasoned that Young County's failures to accommodate could not have caused the shooting because, in the moments leading up to the shooting, there were exigent circumstances "that would lead an objectively reasonable

officer to reasonably believe that Steve was reaching for or had a gun." *Id.*

The court denied Petitioners' petition for rehearing en banc in a summary order. App. 38a.

REASONS FOR GRANTING THE PETITION

The courts of appeals have split 3–1 over whether Title II of the ADA applies to police interactions when officers face exigent circumstances in their encounters with individuals with disabilities. The Fourth, Ninth, and Eleventh Circuits hold that Title II applies to those interactions and that exigent circumstances merely inform whether any requested accommodations are reasonable. The Fifth Circuit alone holds that Title II is categorically inapplicable whenever police officers face exigent circumstances. The split is outcome-determinative here: Petitioners' ADA claim would have moved forward in the Fourth, Ninth, and Eleventh Circuits, and a jury would have decided whether Young County discriminated against Steve by refusing to adopt reasonable accommodations that would have protected his welfare. Only this Court can resolve this entrenched split.

The Fifth Circuit's decision is wrong. Title II's text makes clear that it applies to everything that public entities—including law-enforcement agencies—do. The statute's legislative history and implementing regulations reinforce that conclusion. Title II thus requires law-enforcement agencies to make reasonable accommodations for individuals with disabilities, even when officers face exigent circumstances. But the statute does not require any actions that are not reasonable under the circumstances, and the exigencies of a given encounter inform whether a requested accommodation is reasonable. The Fifth Circuit's

exigent-circumstances exception is atextual and illogical. It immunizes counties for their prior failures to implement policies that reasonably accommodate individuals with disabilities based on officers subsequently encountering exigent circumstances—circumstances that might have been avoided but for the public entities' earlier failures.

The question presented is important, and this case is an ideal vehicle for resolving it. In fact, this Court previously granted certiorari to resolve this question, only to dismiss it as improvidently granted because the petitioner changed its position at the merits stage. This case offers another opportunity to address the question and provide crucial guidance. Fatal encounters between mentally disabled individuals and law-enforcement officers are tragically common, but evidence shows that many of these fatalities are avoidable with proper training and policies. Enforcing the ADA as Congress intended, without an exigent-circumstances exception, will ensure that law-enforcement agencies are held accountable for implementing these life-saving techniques and help prevent avoidable future tragedies.

The Court should grant review.

I. The courts of appeals have split over whether Title II of the ADA applies when police officers face exigent circumstances in their interactions with individuals with disabilities.

The court of appeals have split over whether Title II of the ADA applies, and thus requires reasonable accommodations, when police officers who encounter individuals with disabilities face exigent circumstances. The Fourth, Ninth, and Eleventh Circuits

hold that Title II does apply in that context, and the exigencies officers face simply inform whether accommodations are reasonable under the circumstances. The Fifth Circuit, by contrast, holds that Title II categorically does not apply when police officers face exigent circumstances. Only this Court can resolve the conflict.

A. In the Fourth, Ninth, and Eleventh Circuits, Title II applies to police encounters, even when officers face exigent circumstances.

1. The Ninth Circuit has repeatedly held that Title II applies to police interactions and that the exigencies involved in those interactions inform the reasonableness of requested accommodations.

a. In *Sheehan*, the Ninth Circuit acknowledged the circuit split, ultimately "join[ing] the majority of circuits that have addressed the issue" and "hold[ing] that Title II of the [ADA] applies to arrests." 743 F.3d at 1217. This Court granted certiorari in *Sheehan* to resolve this split but ultimately dismissed the question as improvidently granted because San Francisco changed its position at the merits stage. *Sheehan*, 575 U.S. at 609-10.

i. Officers were dispatched to take Sheehan, a mentally ill woman, into custody and transport her from her group home to a mental-treatment facility. *Sheehan*, 743 F.3d at 1217-18. When officers first attempted to enter Sheehan's room, she threatened to kill them with a knife. *Id.* at 1218-19. The officers retreated and called for backup, but rather than waiting for help to arrive, they forcibly reentered Sheehan's room, prompting an altercation that resulted in the officers' shooting her. *Id.* at 1219-20. Sheehan sued

under Title II, alleging that the officers "failed to reasonably accommodate her disability by forcing their way back into her room without taking her mental illness into account." *Id.* at 1232.

The court recognized that applying Title II when officers face exigent circumstances "is a matter of some disagreement among other circuits," but it aligned itself "with the majority of circuits to have addressed the question." *Id.* at 1231-32. It held that Title II "applies to arrests," "agree[ing] with the Eleventh and Fourth Circuits that exigent circumstances" merely "inform the reasonableness analysis under the ADA." *Id.* at 1232. That conclusion followed from the straightforward propositions that "[t]he ADA applies broadly to police 'services, programs, or activities,'" and the court has "interpreted these terms to encompass 'anything a public entity does.'" *Id*

The court also explained that "the reasonableness of an accommodation is ordinarily a question of fact." *Id.* at 1233. Thus, the court held that there was a triable issue of fact "whether the city discriminated against Sheehan by failing to provide a reasonable accommodation" during the police encounter. *Id.* In particular, "a reasonable jury" "could find that the situation had been defused sufficiently … to afford the officers an opportunity to wait for backup and to employ less confrontational tactics." *Id.*

ii. This Court granted certiorari in *Sheehan* to decide whether Title II "requires law enforcement officers to provide accommodations to an armed, violent, and mentally ill suspect in the course of bringing the suspect into custody." 575 U.S. at 608. The Court ultimately dismissed that question as improvidently granted, because San Francisco changed its position

at the merits stage, aligning itself with Sheehan on the question presented, and no party "argue[d] the contrary view." *Id.* at 609-10; *see infra* p. 35. But the Court stated that whether Title II applied in that context was "an important question that would benefit from briefing and an adversary presentation." *Sheehan*, 575 U.S. at 610.

b. The Ninth Circuit has twice reaffirmed its holding in *Sheehan* and allowed Title II lawsuits to proceed to trial, notwithstanding any exigencies police officers faced.

In *Vos v. City of Newport Beach*, 892 F.3d 1024, 1028-30 (9th Cir. 2018), for example, police fatally shot Vos, a schizophrenic man who was "behaving erratically" and "brandishing a pair of scissors" in a convenience store. Vos briefly grabbed a store employee, claiming to take a hostage, and cut another employee with the scissors. *Id.* at 1029. The district court granted summary judgment to the city, but the Ninth Circuit reversed. The court of appeals found that "the officers here had the time and opportunity to assess the situation and potentially employ the accommodations identified," including "de-escalation, communication, or specialized help." *Id.* at 1037. In short, the "facts arguably show[ed] further accommodation was possible." *Id.*

The Ninth Circuit likewise found a genuine factual dispute over whether officers violated Title II in *Hyer v. City & County of Honolulu*, 118 F.4th 1044 (9th Cir. 2024). There, the court considered whether Honolulu failed to provide reasonable accommodations under the ADA in shooting Hyer, who appeared to be suicidal; had been diagnosed with "atypical psychosis," "depressive disorder," "anxiety disorder," and

"substance abuse disorder"; and had barricaded himself inside his home with a knife and a bow and arrow. *Id.* at 1052-54 & n.3. The court concluded that summary judgment was improper because Hyer had "raised a number of possible accommodations"—such as "the use of [a] throw phone or [a crisis-negotiation team"—that the officers may have reasonably used instead of directly confronting and shooting him. *Id.* at 1065-66.

2. The Eleventh Circuit, similarly, treats exigent circumstances during a police encounter as a factor to be considered in the ADA analysis. Exigencies do not foreclose application of Title II altogether.

In *Bircoll*, the Eleventh Circuit considered whether Title II "appl[ies] to law enforcement activity during [a] DUI arrest on the roadside." 480 F.3d at 1081. A deaf man was pulled over for a suspected DUI and subjected to a field sobriety test. *Id.* at 1076-78. He sued, alleging that the county "violated Title II … when it failed to provide him with an interpreter to assist him in communicating with police officers." *Id.* at 1080.

The court concluded that Title II applied. The court noted the Fifth Circuit's contrary view that "Title II *does not apply* to an officer's on-the-street responses to reported disturbances." *Id.* at 1085 (quoting *Hainze*, 207 F.3d at 801). The court expressly disagreed, explaining that, "[i]n [its] view, the question is not" about "the applicability of the ADA," because "Title II prohibits discrimination by a public entity by reason of [one's] disability." *Id.* Rather, the court continued, "exigent circumstances presented by criminal activity" "go more to the reasonableness of the requested ADA modification than to whether the

ADA applies in the first instance." *Id.* In other words, "the question is whether, given criminal activity and safety concerns, any modification of police procedures is reasonable." *Id.*

On those facts, the court held that the requested accommodation—waiting for an interpreter before administering a sobriety test—wasn't reasonable. The court reasoned that "time [was] of the essence" and waiting for the interpreter would "jeopardize the police's ability … to obtain an accurate measure of the driver's inebriation." *Id.* at 1086. But the court reiterated that "[w]hat is reasonable" is a "highly fact-specific inquiry" that "must be decided case-by-case." *Id.* at 1085-86.

3. The Fourth Circuit applies the same framework. In *Seremeth*, the court held that "there is no separate exigent-circumstances inquiry" under Title II. 673 F.3d at 339. Rather, "the consideration of exigent circumstances is included in the determination of the reasonableness of the accommodation" requested. *Id.* The "[m]ost important[]" support for that conclusion, the court explained, is that "nothing in the text of the ADA suggests that a separate exigent-circumstance inquiry is appropriate." *Id.* "What constitutes reasonable accommodations during a police investigation for a domestic disturbance," the court continued, "is a question of fact and will vary according to the circumstances." *Id.* at 340.

In *Seremeth*, the court considered whether the police had provided reasonable accommodations to Seremeth, a deaf individual, while responding to a domestic-disturbance call. *Id.* at 335-36. The court affirmed the district court's grant of summary judgment to the county, finding that there was no genuine

dispute that "[t]he accommodations afforded" by the police "were reasonable" and the "further accommodations requested … would have been unreasonable." *Id.* at 341. "Under the circumstances," the court held, "it was reasonable for the deputies to attempt to accommodate" Seremeth's disability "by calling … an [American Sign Language] trainee, to assist in communication" and "by attempting to use Seremeth's father as an interpreter." *Id.* at 340.

B. The Fifth Circuit alone holds that Title II is categorically inapplicable whenever officers face exigent circumstances.

The Fifth Circuit is the only court of appeals that holds that Title II of the ADA does not apply to police officers' interactions with individuals with disabilities whenever those interactions create exigent circumstances. And that court has repeatedly denied en banc review of this issue.

1. In *Hainze*, the Fifth Circuit held that "Title II does not apply to an officer's on-the-street responses to reported disturbances or other similar incidents"—at least not "prior to the officer's securing the scene and ensuring that there is no threat to human life." 207 F.3d at 801.

There, a 911 caller requested help for Hainze, who "had a history of depression and currently was under the influence of alcohol and anti-depressants, carrying a knife, and threatening to commit suicide or 'suicide by cop.'" *Id.* at 797. Hainze walked toward the officers once they arrived. *Id.* After Hainze ignored two orders to stop, the officers shot him in the chest. *Id.* Hainze sued under Title II, alleging that the sheriff's office and county discriminated against him based on his disability by "failing and refusing to adopt a policy

protecting the well-being" of an individual like Hainze, "a person with a mental illness in a mental health crisis." *Id.* at 801.

The court held that Title II didn't apply. The court acknowledged "[t]he broad language of the statute and the absence of any stated exceptions." *Id.* at 799. The court nonetheless read in an atextual exigent-circumstances exception. It explained that requiring "officers to factor in whether their actions are going to comply with the ADA, in the presence of exigent circumstances and prior to securing the safety of themselves, other officers, and any nearby civilians, would pose an unnecessary risk to innocents." *Id.* at 801. And the court "[did] not think Congress intended that the fulfillment of [the ADA's] objective be attained at the expense of the safety of the general public." *Id.* Thus, the court concluded that requiring officers to accommodate an individual with a disability by, for example, "consider[ing] other possible actions" is not "the type of 'reasonable accommodation' contemplated by Title II." *Id.* at 801-02.

The court summarily denied a petition for rehearing en banc. *Hainze v. Richards*, 216 F.3d 1081 (5th Cir. 2000) (table decision).

2. The court of appeals below reaffirmed its holding in *Hainze*, explaining that that precedent "foreclose[s] ADA claims where police officers face exigent circumstances." App. 13a-14a. And the court found that "there were indeed exigent circumstances" here because "Steve 'was a suicide risk *and* had the means to act on it.'" App. 14a. Thus, the court held that *Hainze* controlled, and those "exigent circumstances … foreclose ADA relief." *Id.* As in *Hainze*, the

court of appeals below summarily denied a petition for rehearing en banc. App. 38a.

C. The split is outcome-determinative, and only this Court can resolve it.

1. The circuit split is outcome-determinative. Had this case arisen in the Fourth, Ninth, or Eleventh Circuits, the district court would not have dismissed Petitioners' ADA claim under the exigent-circumstances exception. Instead, the case would have proceeded to discovery and then to a trial where a jury could determine whether the accommodations that Petitioners alleged Young County failed to make were reasonable under the circumstances.

a. Under the Fourth, Ninth, and Eleventh Circuits' approach, a public entity cannot escape Title II liability and cut off a case at the motion-to-dismiss phase simply by pointing out that officers on the scene faced exigent circumstances. Rather, the plaintiff must have the opportunity to show, based on factual development, that the requested accommodations are reasonable under the circumstances—just as the ADA operates in all other contexts. And as the caselaw shows, ADA plaintiffs get to the jury on that reasonableness question under that standard, even if the individual with disabilities threatened to kill the officers with a knife, *Sheehan*, 743 F.3d at 1218-20; injured a bystander with scissors, briefly took another bystander hostage, and charged at the officers with the scissors, *Vos*, 892 F.3d at 1028-30; or brandished a knife and a bow and arrow at officers, *Hyer*, 118 F.4th at 1053. Some accommodations that have been found to be potentially reasonable under those circumstances include "de-escalation, communication, or specialized help," *Vos*, 892 F.3d at 1037, and

"respect[ing] [an individual's] comfort zone, engag[ing] in non-threatening communications and us[ing] the passage of time to defuse the situation," *Sheehan*, 743 F.3d at 1233.

Indeed, district courts outside the Fifth Circuit routinely allow Title II cases to move past the pleadings, notwithstanding police officers' having faced exigent circumstances. *See, e.g.*, *Wynne v. Town of East Hartford*, No. 3:20-cv-01834, 2023 WL 7339543, at *9-13 (D. Conn. Nov. 7, 2023); *Estate of LeRoux v. Montgomery County*, No. 8:22-cv-00856, 2023 WL 2571518, at *10-18 (D. Md. Mar. 20, 2023); *Brunette v. City of Burlington*, No. 2:15-cv-0061, 2018 WL 4146598, at *32-35 (D. Vt. Aug. 30, 2018); *Kaur v. City of Lodi*, 263 F. Supp. 3d 947, 978-81 (E.D. Cal. 2017); *Buben v. City of Lone Tree*, No. 1:08-cv-00127, 2010 WL 3894185, at *11-12 (D. Colo. Sept. 30, 2010); *Schorr v. Borough of Lemoyne*, 243 F. Supp. 2d 232, 234-39 (M.D. Pa. 2003).

b. Whether the accommodations that Petitioners pleaded would have been reasonable, and whether Young County discriminated against Steve by refusing to implement those accommodations, are questions for the jury. Young County dispatched Deputy Gallardo to check on a "suicidal male with a gun" who was known to suffer from depression. App. 50a; *supra* p. 10. Reasonable jurors could find that Young County should have implemented policies that would have prepared an officer to handle the situation with law-enforcement tactics short of shooting Steve on sight. For example, an officer could have used well-established crisis-intervention techniques like de-escalation or non-confrontation. *Supra* p. 12. A jury could thus find that Young County should have accommodated Steve's depression by sending a properly

trained officer to the scene in the first place. Outside the Fifth Circuit, Petitioners would have been able to proceed with discovery and ultimately to make their case to a jury.

2. Only this Court can resolve the circuit conflict. Several courts have observed that the Fifth Circuit is the only court of appeals to read an exigent-circumstances exception into Title II. *See Sheehan*, 743 F.3d at 1231; *Bircoll*, 480 F.3d at 1085; *Waller ex rel. Estate of Hunt v. City of Danville*, 556 F.3d 171, 174-75 (4th Cir. 2009). Even a Fifth Circuit judge has noted his own court's idiosyncratic position in "creat[ing] a categorical 'exigent circumstances' defense that appears nowhere in the text" of the ADA. *Wilson*, 936 F.3d at 333 (Ho, J., concurring in the judgment). Judge Ho has thus reasoned that "it is not surprising that every circuit to opine on this issue has … rejected [the Fifth Circuit's] approach." *Id.* But despite those admonitions from inside and outside the Fifth Circuit, the court of appeals has declined to take up this issue en banc. App. 38a; *Hainze*, 216 F.3d at 1081. Only this Court can bring the Fifth Circuit in line with the other courts of appeals.

II. The Fifth Circuit's decision is wrong.

The court of appeals' decision below is wrong. Title II applies to all law-enforcement operations, as the statute's text, legislative history, and implementing regulations show. But law-enforcement agencies need make only *reasonable* accommodations, and the exigencies of a given police encounter may inform what was reasonable under the circumstances. The Fifth Circuit's decisions reading an exigent-circumstances exception into the statute are atextual and illogical.

A. Title II applies to all law-enforcement activities and requires reasonable accommodations for individuals with disabilities.

1. Title II of the ADA applies to all law-enforcement activities—including welfare checks and arrests—without an exigent-circumstances exception, as the statute's text makes clear and as its legislative history and administrative implementing regulations underscore.

a. Start with the text. Title II provides that no 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. A local law-enforcement agency is a "public entity" under the statute, and the law prohibits disability discrimination in anything such an entity does.

i. Title II covers all public entities, including local law-enforcement agencies. The statute defines a "public entity," to include "any State or local government" as well as "any department, agency, special purpose district, or other instrumentality of a State or States or local government." 42 U.S.C. § 12131(1)(A), (B). Title II uses the word "any" in the ordinary "expansive" sense. *United States v. Gonzales*, 520 U.S. 1, 5 (1997). And "Congress did not add any language limiting the breadth of that word." *Id.* Local law-enforcement agencies are thus "public entities" covered by Title II. *See Yeskey*, 524 U.S. at 209-10.

ii. Title II's prohibition on discrimination covers everything a public entity does, including a law-

enforcement agency conducting welfare checks or making arrests.

As noted (at 26), Title II prohibits a public entity from denying disabled individuals "the benefits of the services, programs, or activities" of that entity. The Rehabilitation Act of 1973 defines "program or activity" to "mean[] all of the operations of" a public entity. 29 U.S.C. § 794(b). And Congress instructed that "nothing in [the ADA] shall be construed to apply a lesser standard than the standards applied under … the Rehabilitation Act." 42 U.S.C. § 12201(a). That directive, the Court has explained, requires courts "to construe the ADA to grant at least as much protection as … the Rehabilitation Act." *Bragdon v. Abbott*, 524 U.S. 624, 631-32 (1998). Thus, the words "program" and "activity" in Title II, 42 U.S.C. § 12132, should similarly be construed to mean "all of the operations" of a public entity, 29 U.S.C. § 794(b).

Besides, even if certain law-enforcement operations were not "services, programs, or activities" under the ADA, Title II would still prohibit disability discrimination during those operations. Section 12132's final clause protects individuals with disabilities from "be[ing] subjected to discrimination by any [public] entity." 42 U.S.C. § 12132. That clause "is a catch-all phrase that prohibits all discrimination by a public entity, regardless of the context." *Bircoll*, 480 F.3d at 1085. In short, nothing a public entity does is excepted from coverage under Title II.

b. Title II's legislative history and implementing regulations reinforce that conclusion.

For example, the House Report states that the statute's authors chose not to enumerate a specific list of public-entity operations covered under Title II

because the law "simply extends the anti-discrimination prohibition … to all actions of state and local governments." H.R. Rep. No. 101-485, pt. 2, at 84 (1990). That report specifically identified arrests as an activity where "discriminatory treatment based on disability can be avoided by proper training." *Id.* pt. 3, at 50. Congress thus expected that Title II would be read to cover all law-enforcement operations.

Title II's implementing regulations support that reading. Congress expressly delegated to the Attorney General authority to promulgate regulations implementing Title II. *See* 42 U.S.C. § 12134(a). Those regulations provide that "[a]ll governmental activities of public entities are covered" under Title II, which "applies to anything a public entity does," 28 C.F.R. pt. 35, app. B. The regulations also authorize the Department of Justice to oversee the implementation of Title II with respect to "[a]ll programs, services, and regulatory activities relating to law enforcement." *Id.* § 35.190(b)(6).

2. Because local law-enforcement agencies are covered by Title II, that law imposes on them an "affirmative obligation to accommodate persons with disabilities." *Lane*, 541 U.S. at 533. But Title II requires only "reasonable" accommodations. *Id.* at 532; *see* 28 C.F.R. § 35.130(b)(7)(i). And determining what is "reasonable" requires a fact-intensive inquiry that can account for exigent circumstances, as the Fourth, Ninth, and Eleventh Circuits hold. *See Seremeth*, 673 F.3d at 339; *Sheehan*, 743 F.3d at 1232-33; *Bircoll*, 480 F.3d at 1085-86.

That approach aligns with the balance that Congress struck throughout the ADA. The law recognizes "the importance of prohibiting discrimination against

individuals with disabilities," but by requiring only *reasonable* accommodations, the law "protect[s] others from significant health and safety risks." *Bragdon*, 524 U.S. at 649. Title II's implementing regulations codify that principle. They do not require a public entity to allow an individual with a disability to participate in its "services, programs, or activities" if the individual "poses a direct threat to the health or safety of others." 28 C.F.R. § 35.139(a). But, "[i]n determining whether an individual poses a direct threat," a public entity must consider "whether reasonable modifications … will mitigate the risk." *Id.* § 35.139(b). In other words, Title II's regulations expressly provide that if no "reasonable modification[]" can mitigate a "direct threat," a public entity need not make any accommodation. Thus, Title II never "demand[s] action beyond the realm of the reasonable." *US Airways, Inc. v. Barnett*, 535 U.S. 391, 401 (2002); *see Lane*, 541 U.S. at 531-32.

B. The exigent-circumstances exception is atextual and illogical.

The Fifth Circuit alone reads an exigent-circumstances exception into Title II. That exception is unmoored from the statute's text. And, as this case demonstrates, applying the exception leads to illogical consequences.

1. The Fifth Circuit's exigent-circumstances exception is untethered from the ADA's text, as that court itself has acknowledged.

This Court has "repeatedly stated" that "the text of a law controls over purported legislative intentions unmoored from any statutory text." *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 642 (2022). In other words, a court "cannot replace the actual text" of a statute

"with speculation as to Congress' intent." *Magwood v. Patterson*, 561 U.S. 320, 334 (2010).

The Fifth Circuit's approach does just that. In *Hainze,* the court recognized that "[t]he broad language of the statute and the absence of any stated exceptions has occasioned" the Supreme Court to apply "Title II protections into areas involving law enforcement." 207 F.3d at 799 (citing *Yeskey*, 524 U.S. 206). The court nonetheless concluded that Congress did not "intend[] that the fulfillment of [the ADA's] objective be attained at the expense of the safety of the general public"—at least not when police officers are "in the presence of exigent circumstances." *Id.* at 801. That atextual "speculation as to Congress' intent" cannot control over "the actual text" of the statute. *See Magwood*, 561 U.S. at 334.

What's more, that Title II applies even when officers face exigent circumstances does not mean, as the Fifth Circuit feared, that officers must put "the safety of themselves, other officers, and any nearby civilians" at risk. *Hainze*, 207 F.3d at 801. As explained (at 28-29), Title II requires public entities to implement only *reasonable* accommodations, a flexible standard that can account for the exigencies of police responses.

2. Both *Hainze* and this case illustrate the illogical consequences of the Fifth Circuit's exigent-circumstances exception. In both cases, plaintiffs alleged that the county discriminated on the basis of disability by failing to have a policy in place for adequately responding to calls requesting help for individuals with mental disabilities experiencing mental-health crises. But the Fifth Circuit held that exigencies the responding officers faced at the scene relieved the counties of their responsibility under

Title II to maintain those policies in the first place. That doesn't make sense. The fact that an officer encounters exigent circumstances in responding to a mental-health call cannot absolve the county of its *prior* failures.

Start with *Hainze*. There, the plaintiff alleged that "the county failed to reasonably accommodate his disability by 'failing and refusing to adopt a policy protecting the well-being of [the plaintiff], as a person with a mental illness in a mental health crisis situation." *Hainze*, 207 F.3d at 801. Specifically, the plaintiff alleged that the county had a policy of "treating mental health calls identical to criminal response calls," which resulted in "discriminatory treatment" against individuals with mental disabilities. *Id.* But the Fifth Circuit held that it need not assess whether the county's policy was discriminatory—or whether the county could have made reasonable accommodations—because, in the court's view, "Title II does not apply to an officer's on-the-street responses to reported disturbances" in the presence of exigent circumstances. *Id.* Under the Fifth Circuit's rule, Title II allows a public entity to fail to have polices that would reasonably accommodate individuals with disabilities. And that is true even if the failure to have those lifesaving policies is what triggers the exigent circumstances that turn off Title II's reasonable-accommodation requirement by permitting the entity to send an officer without any de-escalation training or experience to respond to an individual with a mental disability experiencing a crisis.

The Fifth Circuit below relied on the same logic to cut off the ADA analysis and immunize Young County of liability. The court acknowledged that Petitioners allege that Young County "lacked policies to 'protect

[Steve's] welfare' or 'respond[] to threatened suicide calls with well-established crisis intervention techniques, including responding with a mental-health professional.'" App. 14a. But the court reasoned that those failures could not, as a matter of law, have led to Steve's discriminatory treatment because of the exigent circumstances that Gallardo encountered at the scene. Thus, the court held, "Gallardo shot Steve 'by reason of' circumstances that would lead an objectively reasonable officer to reasonably believe that Steve was reaching for or had a gun" and not "'by reason of' [Steve's] depression." *Id.*

That reasoning fails. Deputy Gallardo shot Steve because Young County failed to have an adequate policy for conducting welfare checks in the first place. If Young County had reasonably accommodated Steve's disability by having a policy for responding to calls for welfare checks on individuals with mental disabilities experiencing a crisis, Young County would not have dispatched an unqualified 23-year-old rookie officer to the scene. And if Young County had dispatched an officer or a mental-health professional qualified to conduct a welfare check on a suicidal man with a gun, that professional would not have opened the door to that man's house without waiting for it to be answered and would not have confronted and shot the man—or so a reasonable jury could conclude. *Supra* pp. 24-25.

In other words, exigent circumstances should not give counties immunity for their prior failures under the ADA. *See* Br. of United States at 16 n.3, *Sheehan*, 575 U.S. 600 (No. 13-1312). Indeed, this line of cases illustrates why Congress determined that Title II should apply to everything public entities do. With adequate policies in place for accommodating individuals with mental disabilities—for example,

training officers how to respond to calls involving those individuals, including calls for welfare checks—law-enforcement agencies can more effectively prevent fatal encounters between police and individuals with mental disabilities. The Fifth Circuit's rule removes liability precisely where Congress thought it should attach. *See infra* p. 34. The Court should grant review and correct the Fifth Circuit's error.

III. This question presented is important, and this case is an ideal vehicle for resolving it.

A. The question presented is important and recurring.

1. This Court granted certiorari in *Sheehan* to resolve the "important question" presented here—whether Title II "requires law enforcement officers to provide accommodations to an armed, violent, and mentally ill suspect." 575 U.S. at 608, 610. The Court was unable to resolve the question because San Francisco changed its position at the merits stage and the Court dismissed the question as improvidently granted. *Supra* pp. 17-18. This case confirms that the issue remains outcome-determinative and important and offers the Court another opportunity to resolve it.

2. It is critical that the Court answer the question. Fatal encounters between persons with mental disabilities and law-enforcement officers are tragically common. The Fifth Circuit's atextual reading of the ADA insulates law-enforcement agencies from liability precisely in circumstances where Congress commanded the ADA should apply and where lives depend on the statute's application.

Over a quarter of all fatal police encounters involve a person with a severe mental illness. *See* App. 79a. That means that individuals with disabilities are

disproportionately likely to be killed by police officers. Indeed, a person with an untreated mental illness is sixteen times more likely than a member of the general public to be killed during a police encounter. *Id.*

Many of those tragedies could be avoided if public entities trained law-enforcement officers to respond to calls involving individuals with mental disabilities. Crisis-intervention programs, for example, have proved effective at preparing officers to handle individuals experiencing mental-health crises. Br. of American Psychiatric Association, et al. at 30, *Sheehan*, 575 U.S. 600 (No. 13-1312). Trained officers are less likely to stigmatize individuals with mental illness and more likely to consider alternatives to using force in encounters with those individuals. *Id.* at 31-32. Law-enforcement agencies that have implemented those trainings have reported "fewer police shootings, assaults, batteries, and 'problematic use of force issues.'" *Id.* at 33-34.

But the Fifth Circuit's rule absolves law-enforcement agencies from Title II liability even when there are reasonable accommodations that could have prevented tragedies like this one. That rule contravenes Congress's intent. Congress chose to impose ADA liability on all "public entit[ies]"—including law-enforcement agencies—without exception, 42 U.S.C. § 12132, because it determined that those entities should be liable when they discriminate against individuals with disabilities by failing to make reasonable accommodations. This Court should correct the Fifth Circuit's error.

B. This case presents an ideal vehicle for resolving the question presented. The answer to the question determines whether Petitioners' ADA claim

can proceed. If the Court rules in Petitioners' favor, the court of appeals would reverse the district court's dismissal of the ADA claim. Whether Petitioners' requested accommodations were reasonable under the circumstances, and whether Young County thus violated Title II by refusing to implement them, are factual issues for a jury. *Supra* pp. 24-25.

What's more, this case does not raise what in *Sheehan* was "a related question"—which the parties "fail[ed] to address"—of whether a public entity can be held "vicariously liable" under Title II for money damages for the discriminatory "conduct of its employees." *Sheehan*, 575 U.S. at 610. As explained (at 12), Petitioners' ADA claim here is not based on a theory of vicarious liability. Petitioners seek to recover from Young County for the county's own discriminatory acts—its failure to enact policies that would have protected a suicidal man like Steve during a welfare check. Thus, this case doesn't implicate any concerns the Court might have had in *Sheehan* about vicarious liability.

* * *

The courts of appeals have split 3–1 on an important question about ADA liability involving life-and-death stakes for individuals with disabilities. Getting the answer right matters to Steve Winder's family. It matters to other individuals with disabilities whose rights the ADA protects. And it also matters to law-enforcement agencies that would benefit from clarification on this issue. The Court should grant review.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

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