Case No. _____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2025

MATTHEW THOMAS PARKINS, by and through Andrew Turner, his next of friend and Guardian ad Litem; MATT PARKINS, individually,
Petitioner,

v.

HENRY DARGAN MCMASTER; MICHAEL LEACH; ROBERT KERR; SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES, a/k/a SCDSS; TOMEKIA MEANS; CALVIN HILL; SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES, a/k/a DHHS; JOSHUA BAKER; ALTHEA MYERS; SOUTH CAROLINA DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS, a/k/a DDSN; PATRICK J. MALEY; LAURENS COUNTY DISABILITIES AND SPECIAL NEEDS BOARD, a/k/a LCDSNB; UNION MEDICAL CENTER, a/k/a UMC; TONYA RENEE WASHINGTON, MD; JAN BRADLEY; JOHN ROE; JANE ROE; SOUTH CAROLINA; OFFICE OF THE GOVERNOR; MICHELLE GOUGH FRY; SPARTANBURG REGIONAL HEALTH CARE SYSTEM,
Respondents.

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

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Questions Presented

Question I. Whether the state's removal of an intellectually disabled adult from his home and family by application of a standard of proof lower than the preponderance of the evidence violated rights protected by the Fourteenth Amendment that are enforceable under Section 1983. Whether those rights were violated when the adult child and the parent (1) were not served with the charges prior to the hearing, (2) were not represented by legal counsel or a guardian ad litem, (3) where the parent was prohibited from testifying, and (4) where the state violated due process protections established by state and federal statutes.

Question II. Whether Respondents violated rights protected under the Americans with Disabilities Act and 42 U.S.C. 1396n(c)(2) by denying repeated requests to provide services in the least restrictive setting and the courts below applied the wrong standards for an award of injunctive relief and compensatory damages. Whether the lower courts erred by disregarding the resources of the state, and dismissing Petitioners' claim alleging intentional violation of the ADA, 42 U.S.C, 1396n(c)(2) and state law by acting together in furtherance of an illegal purpose to prevent the individual's return to his home and family.

Question III Whether a state law providing that a complaint must be dismissed unless it is accompanied by an expert affidavit may be applied in federal court when the defendant elects to remove the case to federal court.

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PARTIES TO THE PROCEEDING

Matthew Parkins and Matt Parkins were plaintiffs-appellants in the proceedings below.

The defendants below were the State of South Carolina, Henry Dargan McMaster, the Office of the Governor, Michael Leach, the South Carolina Department of Social Services, Calvin Hill, Tomekia Means, Joshua Baker, Robert Kerr, the South Carolina Department of Health and Human Services, Althea Myers, Patrick Maley, Michelle Gough Fry, the South Carolina Department of Disabilities and Special Needs, the Laurens County Disabilities and Special Needs Board, the Spartanburg Regional Health Care System, the Union Medical Center, and Tonya Renee Washington, M.D.

RELATED CASES

Related cases include *A.J.T. v. Osseo Area Schools*, ___ U.S. ___, 2025 U.S. LEXIS 2279 * | 2025 LX 118347 (June 12, 2015), *Eunice Medina, Director, South Carolina Department of Health and Human Services v. Planned Parenthood South Atlantic, et al.*, Case No. 21-1043, a case involving the interpretation of another provision of the Medicaid Act and whether the Act is enforceable under Section 1983[1] and *Berk v. Choy*, 2025 U.S. LEXIS 1010 cert. granted March 10, 2025 re dismissal of suit against health care provider based on lack of affidavit of merit.

[1] That case was initially filed in this Court in 2024 as *Robert M. Kerr, in his official capacity as Director, South Carolina Department of Health and Human Services, Petitioner, v. Julie Edwards, on her behalf and on behalf of all others similarly situated, et al.* Robert M. Kerr and the South Carolina Department of Health and Human Services are Respondents in this case.

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a *writ of certiorari* issue to review the judgment below.

OPINIONS BELOW

The opinion of the court of appeals is reported on October 15, 2024 at *Parkins v. McMaster,* 2024 U.S. App. LEXIS 25862, Appendix A at App. 1, and rehearing was denied on February 14, 2025 at *Parkins v. McMaster,* 2025 U.S. App. LEXIS 3571, in Appendix B at App. 2. The opinions of the district court are reported at *Parkins v. South Carolina* at 2023 U.S. Dist. LEXIS 33002 on February 27, 2023 in Appendix C at Appx. 12, in 2022 2022 U.S. Dist. LEXIS 153057 on August 24, 2022 at Appendix D at Appx. 43, in 2022 U.S. Dist. LEXIS 240635 on April 5, 2022 at Appendix E at App. 57, and in 2022 U.S. Dist. LEXIS 35688 on February 22, 2022 at Appendix F at Appx. 65 .

Decisions of the South Carolina Family Court include orders captioned *South Carolina Department of Social Services v. Cecil Parkins and Andrew Turner, defendants, In the Interest of Matthew Thomas Parkins* dated June 13, 2018 at Appendix G at App. 111, May 16, 2018 at Apendix H at App. 113, April 26, 2018 at Appendix I at App. 116, and April 18, 2018 at Appendix J at Appx.119 and Appendix K at Appx. 120.

JURISDICTION

The court of appeals issued its order on October 15, 2024 and denied Petitioners' request for rehearing on February 14, 2025. Petitioner's request for an extension of time to file this Petition was granted by this Court on May 9, 2025, extending the time to file until June 16, 2025.

CONSTITIUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provision and statutes are reproduced in the Appendix.

STATEMENT OF THE CASE

Matthew Parkins was born with an adrenal insufficiency disorder which was successfully treated with prescribed adrenal medications... until he was eighteen months old.[2] JA1109-1110. When those medications were withdrawn, Matthew suffered an anoxic brain injury and he was placed on life support. Id. He miraculously survived, but suffered permanent intellectual and physical disabilities. Id.

Matthew always lived at home with his father, Matt Parkins.[3] Matthew's long-time treating endocrinologist, Dr. Amrhein, described Matt in 2018 as carrying "the entire burden of caring for this young man and his younger brother who has a similar disorder," opining that "[i]t is difficult to state what it unbelievable job his father has done caring for Matthew over the years." JA 1083. According to Dr. Amrhein: "it is a miracle that Matthew is still alive given the serious, life-threatening nature of his adrenal disorder." JA 1084.

Matthew received therapy services and other supports funded through the ID/RD (Intellectual Disabilities/Related Disabilities) Medicaid waiver services program operated by the South Carolina Department of Disabilities and Special Needs (DDSN) under contract with the

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[2] All factual allegations in the complaint must be taken as true on the claims dismissed on defendants' motions to dismiss. See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The lower courts were required to view the facts and draw reasonable inferences in the light most favorable to Petitioners in the claims dismissed on summary judgment. *Scott v. Harris*, 550 U.S. 372, 380 (2007).

[3] In 2018, Matt and Matthew's mother were living separately and Matt took care of all three children in the family home.

South Carolina Department of Health and Human Services (DHHS). 42 U.S.C. 1396n(c)(2). In April, 2018, Matthew was looking forward to rolling across the Union High School graduation stage in his wheelchair in just a few weeks. JA1434-1435.

Matt had built a strong care team to help care for Matthew, his son, Elijah, who also suffers from the same genetic disorder, and his daughter, Lydia.[4] Matthew's devoted caregiver, Andrew Turner, picked him up at the end of each school day. They spent a few hours in the community together, before Andrew transported Matthew home.

Matthew's professional care team included Mary Katherine Bagnal, a masters level social worker with twenty years of case management experience working with adults like Matthew. JA1097-1100. Bagnal had worked with Matthew for eight years. Id. She had served for four years on the governing board of DDSN, the agency responsible for providing services in South Carolina to persons who have intellectual and other disabilities, having been appointed to that office by Governor Mark Sanford. Bagnal was well acquainted with the supports and services provided through the Medicaid waiver. She and other former Commissioners were also knowledgeable about the persistent history of abuse in DDSN residential programs and the failure of state officials to address those issues. JA1550-1639, 1097-1099.

Another solid rock on Matthew's professional team was Lennie Mullis, a masters level counselor who had also provided counseling services to Matthew years. JA1095-1096, 1209-1215. Mullis had over forty years experience providing services to intellectually disabled clients and formerly served as the director of a local SCDDSN Board. She was in and out of the Parkins

[4] Matthew and the children's mother were separated in 2018 and she was not living in the family home.

home on a regular basis.

Matthew also received services from the Union County Disabilities and Special Needs Board (UCDSNB). His Medicaid-funded case manager there performed assessments and prepared an annual support plan that was approved by DDSN.[5] Each year, his UCDSNB case manager determined that he qualified for in-home services funded through the Intellectually Disabled/Related Disability (ID/RD) Medicaid waiver program. JA1411. That program has a years-long waiting list that Mullis helped him navigate through. JA1144.

Matthew received special education services at Union High School. Matt attended Matthew's IEP[6] meetings and he enjoyed a positive relationship with Matthew's teachers. JA1138-1144. Matthew's records from elementary school through high school showed that Matthew always arrived at school well dressed and his records never indicated any suspicion of abuse. JA. 1138.

Matthew is taken into DSS custody

Monday, April 16, 2018 started out as a normal day at the Parkins home. Matt was busy preparing his three children for school when Matthew experienced a bout of "explosive diarrhea." JA1251. Matt carried Matthew's kicking 181+ pound body through the narrow bathroom door and put him into the tub to bathe him. JA1138. After bathing and diapering Matthew, Matt transported all three children to their respective schools. Id.

At 11:04 a.m. on the morning of April 16, 2018, the South Carolina Department of Social

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[5] As a home and community based waiver recipient, DDSN and DHHS both had a duty to protect Matthew's health and welfare. 42 U.S.C. 1396n(c)(2).

[6] IEP stands for Individualized Education Program, a plan required under the Individuals with Disabilities Education act at 20 U.S.C. § 1414

Services Adult Protection Services unit (referred to herein as "DSS") received a call reporting that Matthew was being abused at home and that "the suspected perpetrators are father/caregiver Cecil M. Parkins, and part-time caregiver, Andrew Unknown." JA 1001.

State Court Proceedings

The South Carolina Omnibus Adult Protection Act (SCOAPA) authorizes DSS to investigate reports of abuse or neglect of vulnerable adults who live at home, but the Act requires DSS to refer those investigations to the State Law Enforcement Department (SLED) "if there is reasonable suspicion of criminal conduct." S.C. Code 43-35-15(c). The Act defines "physical abuse" as "intentionally inflicting or allowing to be inflicted physical injury on a vulnerable adult by an act or failure to act." S.C. Code 43-35-10(8). A person who "knowingly and wilfully abuses a vulnerable adult is guilty of a felony and, upon conviction, must be imprisoned not more than five years." S.C. Code 43-35-85(B). The SCOAPA defines "protective services" as "those services whose objective is to protect a vulnerable adult from harm caused by the vulnerable adult or another." S.C. Code 43-35-10.

DSS assigned Respondent case manager Tomekia Means to investigate. JA1140. The DSS intake report identified Matthew's father, Matt Parkins, and his caregiver, Andrew Turner as "suspected perpetrators." JA997.

As usual, Andrew arrived at Union High School to pick Matthew up. JA1100. He was turned around at the door and was not advised of the allegation that he was a suspected perpetrator of abuse. Id. When Matt arrived at the school, he was not allowed to see the photographs that had been taken of Matthew's bruised legs. JA 1000-1001, 1790.

Means falsely assured Matt that "he was not being accussed of any abuse or neglect at this

time" JA 997, 1000-1001. She told Matt that "the Agency will conduct a thorough investigation to rule out or confirm such" and that a hearing would be held in the family court on April 18, 2018. JA 997 and 1000-1001, 1790. At Means' request, Matt provided contact information for Matthew's mother, Linda Parkins, when Means informed him that: "it is the right of the other parent *and a duty of the Agency to inform each parent of the DSS protective proceedings.*" JA 1370, 1434-1435.

Means told Matt that it was not necessary for him to attend the hearing. JA1140. She did not explain Matthew's "Rights and Responsibilities" to Matt, contact Matthew's mother, or provide either of them with the agency brochure that she was required to provide "at the onset" of the investigation. JA960. Nor did Means advise Matt that the DSS intake report had identified both him and Andrew as "suspected perpetrators." JA1139.

As Means requested, Matt delivered Matthew's medications to Means later that same day. JA1139. He asked Means to call Matthew's endocrinologist, Dr. Amrhein, who had managed Matthew's fragile adrenal condition for years. JA1139.

Matthew was involuntarily transported by law enforcement to Union Medical Center, operated by the Spartanburg Regional Medical System (hereinafter "SRMS"), where he was examined by Janet Leahy Wilson, a physician's assistant.[7] JA1221. Her evaluation reported "bruisings and markings about the body of Matthew Parkins that were consistent with lifting." JA 1005. Wilson reported that Matthew was "smiling and cooperative" and that he had no injuries other than the bruising on his legs. JA 1221. Finding no indication of intentional abuse, Matthew should have been released and allowed to return home at that point. Despite Wilson's assessment,

[7] Means erroneously identified PA Wilson as "the attending Physician." JA1005.

Matthew was admitted and assigned to attending physician, Dr. Tonya Washington.

Matt informed Means that Matthew was a participant in the ID/RD Medicaid waiver program operated by DDSN and that he also received services from providers Mary Katherine Bagnal and Lennie Mullis. JA1002. Means' wrote in her report that Matt was unable to provide the name of Matthew's physician, but that report also states that "client provided the telephone number (864) 573-8732) - (Dr. Armaran (sic)). JA 1002.

As Means requested, Matt delivered Matthew's medications and ipad to her that same day. JA1005. He again stressed to Means the importance of contacting Dr. Amrhein. Id. Hospital staff "requested a sitter for Matthew Parkins for his stay at the facility." JA1003.

For the entire 32 days of confinement in the hospital, Matthew was restrained in bed by a sitter who was paid by the state to prevent him from getting out of the bed. JA66. At home, Matthew ambulated independently around the house, going into the kitchen to get snacks out of the cabinets. JA1141. He walked with assistance and moved thoughout his school and the community in his wheelchair. Id. Because Matthew was prevented from getting out of the hospital bed during the next 32 days, he was administered painful lovenox injections in his stomach to prevent blood clotting. JA1223. He was not provided physical or recreational therapy in the hospital, was not allowed to attend school and was not allowed to go outdoors for over a month.

Case Manager Bagnal visits hospital

Upon learning that Matthew had been taken into state custody on the 16th, his private care manager, Mary Katherine Bagnal traveled to the hospital on the 17th to personally assess Matthew's condition. JA1271-1276. Bagnal provided Matthew's nurse at the hospital with the list of medications he was taking at home and asked that his physicians be contacted, because he was

not receiving the medications as ordered by Dr. Amrhein. JA1271-1276.

Bagnal twice spoke with Means that day, asking her to contact both Dr. Amrhein and Lennie Mullis about Matthew's history and condition. Bagnal urged Means to return Matthew home to the care of his father, who was most familiar with the complexity of his day to day care needs. JA1008. Alternatively, Bagnal offered to make arrangements for Matt to be cared for in an apartment setting, with 24/7 supervision during the investigation. JA1008.

Also on the 17th, the hospital pharmacist, Lewis Harmon, compared the medications Matthew was receiving from his pharmacy before admission to those being administered as an inpatient. JA710. Harmon warned the hospital clinicians of the need to address the discrepancy "between dosages of adrenal medications that Matthew was then receiving to the higher amounts Matthew received at home."[8] Id. Dr. Washington ignored that warning and the signs of the impending adrenal crisis. JA1111-1112.

Family Court Proceedings

The SCAPA authorizes DSS to "*petition* the family court for an order to provide protective services...," but the Act does not authorize the agency to file a *complaint* alleging criminal acts. S.C. Code 43-35-45(B). Instead of referring what was actually a criminal investigation to SLED, as was required by S.C. Code 43-35-15(c), DSS filed a *complaint* in the state family court alleging that Matt and Matthew were "suspected perpetrators" of a criminal offense. JA___.

[8] Matthew had a very low testosterone level upon admission, as was documented in SRHCS patient history upon admission. JA1111. By May 15, 2018, that level as nearly undetectable, but he was not administered the monthly testosterone injections Dr. Amhrein had ordered until the day before his discharge on May 18, 2018.

On April 17, DSS filed a document in the family court captioned "Summons, Notice of Hearing, Notice to Appoint Attorney and Guardian ad Litem" and a "Complaint." Despite Means having assured Matt that he was not being accused of abusing his son, the complaint named both Matt and Andrew as "defendants." JA1093. The complaint alleged that "[b]y reason of abuse, neglect, or exploitation, there is a substantial risk to this vulnerable adult's life or physical safety, and the vulnerable adult is unable to be protected." DSS did not serve Matt with the summons, notice or complaint until April 23, 2018 and Andrew was never served. JA1140.

Back at the hospital

Despite Matt having provided Matthew's medications to Means, Bagnal providing the list of medications and the names of Matthew's doctors to the nurse at the hospital on the 17th, and the hospital pharmacist warning of the discrepancy, the dosages of the adrenal medications that Matthew received at home were reduced by one-half upon admission to SRHS. JA1111. By April 18, 2018, hospital records keynoted a drop in Matthew's blood pressure with an "!," the first of many signs of the impending adrenal crisis.[9] Id. Petitioner's expert reported that: "Dr. Washington not only failed to administer stress steroid dosing (2-3 times standard dose) to treat adrenal crisis, she disregarded the hospital pharmacy warning and continued Hydrocortisone at only half of his routine dose - nearly a week after being notified by the hospital pharmacist." JA1111. No clinician recognized "the diagnosis or need to treat his persisting hypotension or progressive weight loss until April 28, 2018." Id. Although Matthew's testosterone level was already low upon admission to SRHS, he was not provided the monthly injection Matt provided at home, per Dr. Amrhein's order, for over a month.

[9] Expert Report of Family Medicine Physician Oscar F. Lovelace.

The Probable Cause Hearing

The probable cause hearing was held in the state family court on April 18 without DSS having served any of the adverse parties with the summons or complaint, or even notifying Matt or Andrew of their status as "defendants." Orders Appendix at 120-121. Those papers were not served upon Matt until five days *after* the probable cause hearing, on April 23, 2018. Orders Appendix at 111-112. Andrew and Matthew's mother, Linda Parkins, were never served. Id.

At the probable cause hearing, the deputy who took Matthew into protective custody and Means were the only witnesses. Transcript at 1392-1493. They presented hearsay testimony that Matthew's teachers had reported to them that he had previously come to school with injuries indicative of abuse. Id. Means claimed that Matthew's teachers sent her photographs of those prior injuries.[10] Matthew's teachers were mandatory reporters, who were required to report suspicions of abuse within 24 hours under the SCAPA. S.C. 43-35-25 at Statutes Appendix page 13. The April 16, 2018 report was the first report of suspected abuse ever filed.

Neither the deputy nor Means produced photographs of those alleged prior injuries at the hearing, nor where any such photographs subsequently produced in discovery. JA1392-1493. No teacher who allegedly reported those prior injuries testified at the probable cause hearing, nor did the state produce any written statement at that hearing to support those allegations. Id.

In her testimony, Means failed to inform the family court judge that the medical examiner at UMC had determined that the bruising on Matthew's legs was consistent with being lifted. Id. She failed to disclose that Matthew's long time professional care manager, Mary Katherine

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[10] Lennie Mullis had visited Matthew at home the weekend before he was taken into protective custody on April 16, 2018, he was wearing shorts and a t shirt and did not have bruises on his legs or arms. JA1303.

Bagnal had advised her that the bruising occurred when Matt lifted Matthew to bathe him after an "explosive bowel movement," while getting him ready for school. JA1304. Means did not disclose to the court that Bagnal urged DSS to immediately return Matthew home. She did not disclose to the court that Bagnal - a masters level social worker with decades of experience working with people like Matthew, who formerly served on the governing board of DDSN - had offered to arrange for him to be placed during the investigation, either with Matthew's grandparents or in an extended stay setting with 24/7 supervision.

Means also failed to disclose that Matthew's counselor, Lennie Mullis, had left six messages on her phone, which Means failed to return, despite Bagnal asking her to call Mullis. JA1303.

Perhaps most importantly, Means failed to disclose to the family court that she had ignored repeated requests by both Matt and Bagnal to contact Matthew's long time treating endocrinologist, Dr. Amrhein. At no time during the 32 days that Matthew was held in involuntary state custody did Means contact Matthew's physicians who had treated him for many years. JA1216.

On the day of the probable cause hearing, Matt arrived at the courthouse without counsel, thinking that he was there to take Matthew home. JA1139. Means had talked "real sweet" to Matt at their two meetings on April 16, 2018 and she had assured him that he was not being accused of abusing his son. JA1139. Matt still had not been served with the summons or complaint or been informed that DSS had deemed him and Andrew as "suspected perpetrators." At the probable cause hearing, the court prohibited Matt from testifying or presenting any evidence in defense of Matthew, Andrew or himself. JA1392-1493.

Because they had not been served with the summons, complaint or notice of hearing, neither Matthew nor Andrew were present at the probable cause hearing. DSS never served Matthew's mother with a notice of the hearing or the complaint.

Standard of Proof

The SCAPA does not establish the standard of proof for removing a vulnerable adult from his home. But, the South Carolina Supreme Court ruled in the case *In the Interest of Doe v. S.C. Dep't of Soc. Servs.*, 407 S.C. 623, 637-638 (2014) that proof by clear and convincing evidence is required to remove a vulnerable adult from the home.[11] The Supreme Court ruled in that case that "[w]ithout question, an involuntary removal under the Act deprives a person of his liberty..." Id. Citing U.S. Const. amend. XIV, § 1 ("[N]or shall any state deprive any person of life, liberty, or property, without due process of law.") and S.C. Const. art. I, § 3 ("[N]or shall any person be deprived of life, liberty, or property without due process of law."). Thus, the state Supreme Court established *Doe v. DSS* that "a heightened standard of proof, i.e., clear and convincing evidence" is necessary to remove a vulnerable adult from his or her home. Id. Citing *In re Knight,* 178 Wn. App. 929, 317 P.3d 1068 (Wash. Ct. App. 2014) (holding that standard of proof for a vulnerable adult protection order opposed by the alleged vulnerable adult is clear, cogent, and convincing evidence because the protection order implicates the vulnerable adult's liberty and autonomy interests).[12]

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[11] In reaching that conclusion, the Supreme Court noted that the General Assembly had established a "clear and convincing standard of proof for the issuance of an involuntary commitment order involving a person who suffers from mental health issues. Citing S.C. Code Ann. § 44-17-580(A). Id.

[12] See also *S.C. Dep't of Soc. Servs. v. Patten*, 412 S.C. 93, 98 (2015) and *Sellaro v. State Dep't of Soc. Servs.*, 2025 WL 54824 (S.C. Ct. App. February 19, 2025) (Unpublished).

The transcript of the probable cause hearing shows that the state court applied a standard of proof even *lower* than the preponderance of the evidence to commit Matthew to the custody of DSS:

> ...the Court is not looking into the merits of the action with regard to the allegations. The Court is just concerned with whether or not probable cause, *which is a lower standard than a preponderance of the evidence* the State would have to prove at the merits hearing, but that probable cause has to exist that indicates that Matthew Parkins may–either by abuse or neglect, there could be a danger to his physical safety.

(Emphasis added.) JA1402-1403. The family court admonished DSS that "this needs to be an expedited investigation with special circumstances" and that "the Department immediately begin further investigation, including medical background checks...checks with physicians ..." Id. The court instructed that "a guardian ad litem needs to be appointed" and that "an attorney will be appointed to represent the guardian...as quickly as possible 'cause I do want this expedited." Id.

The court issued a form order April 18, the same day as the probable cause hearing, erroneously stating that:

> The parties were properly served with the notice of hearing. The parties were present and were represented by attorneys as stated herein above with the following exceptions:

Orders Appx. a 120-121. No exceptions were noted on the form.[13]

The order contains no "FINDINGS of FACTS and CONCLUSIONS of LAW." Id. No statute nor regulation was cited in the order. In handwriting, the form order provides:

(1) An (sic) guardian ad litem and guardian attorney shall be appointed to Matthew Parkins.
(2) Matthew Parkins will remain in DSS custody;
(3) DSS shall expedite an investigation.

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[13] Another section of that form order states that "Defendant[s]" Matt and Andrew appeared "Pro Se" and that a guardian ad litem and attorney for the guardian ad litem were "Not appointed."

South Carolina Adult Health Care Consent Act

The SCAPA authorizes DSS to petition the family court to take custody of a vulnerable adult and to petition the court to provide *protective services*, but it does not terminate a parent's right to make health care decisions for the child. The April 18, 2018 order granted custody to DSS, but it did not alter the priority established in the South Carolina Adult Health Care Consent Act (SCAHCCA) at S.C. Code 44-66-30 to make health care decisions for an adult.[14]

The DSS Adult Protective Services Policy and Procedure Manual in effect in 2018 specifically addressed the agency's policy for providing consent for medical treatment:

> The Department does not secure custody of adults for the sole purpose of giving consent for medical treatment. *Relatives, guardians, and persons named as the health care power of attorney may give consent for medical treatment of impaired adults who are unable to give informed consent.* In the absence of relatives, a guardian, or health care power of attorney, the health care provider should follow procedures in the Adult Health Care Consent Act: S.C. Code of Laws, § 44-66-10 et seq.

(Emphasis added.) JA 989.

The SCAHCA in effect in 2018 established the following priority of persons who were authorized to make health care decisions for an adult unable to consent:

(1) a legal guardian appointed by the court;
(2) an attorney-in-fact appointed by the patient;
(3) a person given priority to make health care decisions for the patient by another statutory provision;
(4) a spouse;
(5) an adult child;
(6) a parent...

S.C. Code 44-66-30. The April 18, 2018 family court order did not authorize DSS to override the

[14] The order of priorities was amended in 2019. See Statutes Appendix at page 43.

priority of persons authorized to make health care decisions established in the SCAHCCA.[15]

That order did not nullify the authority of Matthew's parents pursuant to the SCAHCCA to make health care decisions absent "a person given priority to make health care decisions for the patient by another statutory provision." The April 18, 2018 order did not authorize DSS to make medical decisions, and certainly did not authorize DSS to institutionalize Matthew.

Bagnal returned to the hospital

Upon learning that Matthew had not been released after the probable cause hearing, Bagnal returned to the hospital on April 19, 2018.[16] JA1271-1276. She again provided Matthew's nurse with the list of medications Matthew was receiving at home and expressed concern that he was not receiving the same dosage of adrenal medications that he was taking at home. JA1271-1276. She asked the nurse to contact Dr. Amrhein. Id.

Bagnal again spoke with Means on April 19, 2018, offering to arrange placement in an extended stay apartment where Matthew would receive around-the-clock care from private sitters, where he could return to school and would receive the therapies he had been receiving through the Medicaid waiver at home. JA1255. She also offered to arrange placement with Matthew's grandparents, who visited Matthew every week during the one-hour supervised visits Means allowed and had not been accused of harming Matthew. JA 1011 and1276. Means again rejected Bagnal's offer and recorded in her DSS case notes that: "each establishment unable to meet the need of Matthew Parkins due to his needs." JA1011.

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[15] A subsequent order issued on May 16, 2018 - just two days before Matthew was released from DSS confinement without a court order - authorized DSS to "provide such routine and emergency medical care as may be required..." Order Appendix at 113-115.

[16] Means' case notes confirm that the date of this second visit was April 19, 2018.

Means restricts hospital visitors

The next day, on April 20, 2018, Means instructed the hospital social worker, Jan Bradley that: "...the parents are not to visit without a OSS representative present and if the parents come by to call her [Means] or her supervisor [Hill]." JA719.

Means followed up with a call to another hospital employee, Heather Freeman, to provide a list of persons allowed to visit Matthew, with instructions to post a sign on his door requiring anyone who attempted to visit to report to the nurse's station. JA1015. Means instructed Freeman:

> ...travel into the room of Matthew Parkins to be at minimum. There's no cause to be of alarm or anyone being combative; just Matthew Parkins is non-verbal and Case Manger is discouraging other providers calling Agency concluding the bruises on the body of Matthew Parkins." JA1014. Heather assured Means that she would alert the Head Nurse about these visitation restrictions.

Id.

Service of subpoena and complaint on Matt and home visit

Matt was not served with DSS' subpoena, notice of hearing and complaint until 9:00 a.m. on April 23, 2018 - five days *after* the probable cause hearing. Means and her supervisor, Calvin Hill arrived at the Parkins home that same afternoon to assess Matthew's siblings after they returned home from school "for safety/risks, permanency and the well being of all in the household." JA 1372-1374. Means spoke with Matthew's siblings, Elijah and Lydia separately, and reported that they were neatly dressed and well groomed. Id. Elijah told Means that "his parents treat him good." Id. Means' case notes state that she provided both parents "with brochures explaining the process of an open Investigation and their rights," but the brochure she left with them was for child abuse cases (where the child was a minor), not investigations of reports of abuse of vulnerable adults. JA1374. In those cases, the child and the parents are

provided legal representation at the probable cause hearing. S.C. Code 52-7-1620.

Mean's case notes state that: "Case Manager Means and Supervisor Hill repeatedly assured Cecil "Matt" Parkins no one is accusing him, but a thorough investigation must be completed." JA1374. Neither Means nor Hill informed Matt that DSS was working in conjunction with hospital social worker Jan Bradley that same day to involuntarily commit Matthew to a institution operated by the South Carolina Department of Disabilities and Special Needs (SCDDSN). JA1700.

Means advised social worker Bradley on April 23, 2018 that she was pursuing placement for Matthew in "a facility at Laurens about a respite/longterm bed" and instructed Bradley to obtain the tuberculosis test that was required for plaement in that facility. JA1700. The facility in Laurens County was Clinton Manor, which is an intermediate care facility for individuals with intellectual disabilities ("ICF/ID"). An ICF/ID is the most restrictive and most expensive placement in the DDSN system. Bradley confirmed to Means that the test was administered.

Jerry Mize, Petitioner's witness who was the director of the Oconee County Disabilities and Special Needs Board and had experience operating ICF/ID facilities opined that: "It is inexplicable why a decision was made to place Matthew in an ICF/ID, which is the most restrictive placement in the DDSN system." JA1107. Lennie Mullis opined that in all the years she had worked in the DDSN system, she had "never known DDSN to place a client in an ICF/ID before attempting to place the individual with family members" and that such placement "was certainly not 'routine.'" JA1091. According to Mullis: "Placement in an ICF/ID is always the **last choice**, after all other less restrictive options have been exhausted." Id.

Process for Involuntary Placement in an ICF/ID

The South Carolina Code of Laws provides a process which must be followed to involuntarily commit an individual who has intellectual or related disabilities to a facility operated by SCDDSN. First, the individual must be assessed through a diagnostic center approved by SCDDSN. S.C. Code 44-20-390. A service plan must be deveoped to "determine the 'least restrictive environment' appropriate to meet the indivdual's needs. S.C. Code 44-20-390(B). That statute requires that: "The parents, the legal guardian, the client, and other appropriate parties must be included in the review," but statute gives the director of DDSN final authority to determine placement. Id. and S.C. Code 44-20-430.

The procedures that must be followed for an intellectually disabled individual to be involuntarily committed are set forth in S.C. Code 44-20-450. The director of the county DSS office where the individual resides is authorized to file a verified petition with the family court or the probate court requesting involuntary commitment. S.C. Code 44-20-450(A). An attorney must be appointed for the individual, with notice given to his parents of the time and place for the hearing, "together with a written statement of the matters stated in the petition." Id. The notice must advise the parent of his right to be represented by counsel. S.C. Code 44-20-450(C) prohibits the court from issuing an order involuntarily committing the individual to a DDSN residential facility without the DDSN diagnostic center providing its report recommending admission. Id. ("The court may not render judgment in the hearing unless this report is available and introduced.") The individual may not be involuntarily committed unless the court determines that he is "in need of placement in a facility or service program of the department..." and issues an order of committment. S.C. Code 44-20-450(D). None of those procedures were followed by the Respondents.

Preadmission Screening PASARR

In addition to those state statutory requirements for involuntary admission to any DDSN facility, federal law requires a complex preadmission screening process, referred to as a Preadmission Screening and Annual Resident Review (PASARR). 42 U.S.C. § 1396r(b)(3)(F)(ii) (e)(7)(C)-(D) prohibits the state Medicaid agency, here the South Carolina Deparment of Health and Human Services (SCDHHS), from admitting a person who has intellectual disabilities to a nursing facility without a complex screening to determine whether the individual's needs can be met outside of an institutional setting. *Voss v. Rolland*, 592 F.3d 242, 246-247 (1st Cir. 2010). The purpose of that statute is to divert intellectually disabled persons from being institutionalized, not to "check" off the box so that the state can bill Medicaid once the individual is placed in a nursing facility.

DDSN and DHHS did not begin the PASARR assessment process until **after** the decision was made to place Matthew in the ICF/ID - the most restrictive in DDSN's system. As alleged in the amended complaint at paragraph 86:

> Maley, Baker and others violated federal law by failing to obtain a Preadmission Screening and Resident Review (PASARR) assessment required by the Nursing Home Reform Act before approving the transfer to Clinton Manor ICF/ID, and they failed to determine whether the provision of specialized services could prevent institutionalization.

Petitioners also alleged in the amended complaint that this violation is continuing and that it has evaded review, resulting in violations of the ADA.

On May 16, 2018, there was confusion between social worker Bradley, DSS supervisor Hill and SCDHHS about who needed to fill out this "form" - *after* Means had already signed admission forms for Matthew to be admitted to the ICF/ID in Laurens County. JA763.

Appointment of GAL and Attorney

The state law does not require the vulnerable adult to be represented by an attorney or a guardian ad litem either prior to or at the probable cause hearing. In contrast, in all child abuse proceedings (persons under age 18), S.C. Code §63-7-1620 requires the appointment of a guardian ad litem for a minor child, and the court may appoint legal counsel for the child. In those cases, the parents must also be provided legal counsel if they are unable to afford a lawyer. Id.

The SCOAPA gives the state court ten days after the probable cause hearing to appoint a GAL to represent the interests of a vulnerable adult - who has already been taken into DSS custody. S.C. Code 43-35-45(C). It was not until April 26, 2018 that the family court judge signed the order appointing Joanne Metcalf as guardian ad litem for Matthew and Beth Bullock as attorney for both Matthew and the GAL.[17] Order Appx. at 116-118.

Matthew suffers an adrenal crisis

Neither Matthew's GAL nor his parents were informed when he suffered a life threatening adrenal crisis at the hospital on the weekend of April 28, 2018. JA1111. Dr. Lovelace's expert report states that: "There is no mention made in any hospital progress note of the diagnosis or need to treat his persisting hypotension or progressive weight loss until April 28, 2018, when his blood pressure was dangerously low and he was given IV fluids." JA1111. Even then, Matthew was still not administered the baseline dosage that Dr. Amrhien ordered and Matt administered at

[17] On the same day that the family court issued its "temporary order" (April 18, 2018), the deputy clerk of court signed a form order appointing Melinda Butler as attorney for Matthew. Order Appx. at 119. But, the record contains no evidence that Attorney Butler was ever served with that order and she never met with Matthew or appeared at any hearing. The order appointing Metcalf was not filed until April 27, 2018, but her GAL report states that she "received and reviewed legal documents on April 24, 2018." Metcalf spoke with Respondent Calvin Hill, who was Means' supervisor on April 26, 2018.

home. Id. It was not until April 30, 2018, that another SRHS doctor, Dr. Keith "noted that Matthew needed an increase in his hydrocortisone dose," and he discussed the matter with the hospital pharmacist. Id. The dosage of Hydrocortisone was increased on May 1, 2018 to 20mg/day, which was his usual daily dose at home. Id. Still, SRHCS did not administer the prn additional stress dosing that Matt provided at home, as ordered by Dr. Amrhein. Id. As Dr. Lovelace noted, despite hospital notes stating that Matthew had suffered from adrenal crisis over the weekend, the hospital still did not contact his endocrinologist, or any endocrinologist, until Dr. Amrhein was contacted the day before Matthew was discharged on May 18, 2018. JA1111-1112, 1681. Also, the day before Matthew was discharged - without an order from the court - SRHS finally administered the long overdue testosterone shot.

Respondants plan to institutionalize Matthew

Even after Matthew suffered an adrenal crisis at the hospital, none of the Respondents included either Matthew's parents, Dr. Amrhein or his court-appointed GAL in communications or meetings moving forward with their plan to admit him to the ICF/ID Means chose. JA1383, 1452. Matthew's long time case manager, Mary Katherine Bagnal, his counselor, Lennie Mullis, and his local SCDDSN Board were also not informed of or involved in this scheme.

It was "highly unusual" for such a placement not to be initiated by the local board that had served Matthew through the ID/RD Medicaid waiver for many years. JA1104-1107, 1092. When Means realized on April 27, 2018 that the request for critical placement had to be initiated by the local SCDDSN board, she contacted Matthew's case manager at UCDSNB, Dale Summer, who had worked with Matthew for years. By that time, Means had already made arrangements for placement with the Residential Director of the Laurens County facility, and she told Summer that

"they are going to place him." JA901-902.

Summer was then removed as Matthew's local board case manager and was replaced by Angie Barber, who also worked for the local board. JA1019. Means advised Barber that "she does not have much other than the allegations" to help Barber complete the required paperwork." Id.

On April 30, 2018, Barber sent the residential director for the Laurens County ICF/ID the information its Residential Director requested to admit Matthew to that facility, without notice to or consent of the GAL or Matthew's parents. JA1092. No one from the UCDSNB had contacted Matthew's court-appointed GAL, Matthew's his family, Bagnal or Mullis about this plan. Instead, Barber contacted SRHCS nurse, Brandi Gillian, who told her that the hospital is "not providing any care as DSS has a sitter coming in around the clock sitting with Matthew." JA903.

On May 1, 2018, Barber met with Means, again without notice to the GAL or Matthew's parents, to obtain from Means the information needed to submit the request for critical placement in the ICF/ID chosen by Means to SCDDSN. JA880-881. Barber immediately forwarded to SCDDSN the language that Means had provided to her, verbatim. JA880-881.

Again, neither Matthew's GAL nor his parents were informed, and no court order was obtained, when Means signed a new SCDDSN "Service Agreement and Authorization to Disclose/Obtain Information." JA880-881. Barber telephoned SCDDSN State Office and was assured that Matthew's application for critical placement "would be reviewed as soon as possible..." JA877. Means also signed the "Assessment of Need for Residential Habilitation" form, which Barber immediately emailed to SCDDSN Central Office. JA900.

That pre-printed form stated that all efforts "to resolve the situation without resort to out of home placement had been explored and implemented." JA877, 890. But, no one at the hospital or

any of the agencies involved had made a home study that would allow Matthew to be placed with a relative during the investigation, despite his grandparents and two aunts being willing for Matthew to be placed with them. JA1357-1369.

Back at the hospital

At the hospital, Matthew's cortisol levels measured below a detectible limit on May 2, 2018, and he continued to suffer from hypotension without the additional stress dosage which Matt provided, as needed at home, per Dr. Amrhein's orders. JA1222. Matthew's blood pressure continued to plummet to a dangerously low level. Id.

Means recorded spending an hour and a half on May 3, 2018 assessing Matthew's well-being, his safety, and risks possib (sic) present during his stay at Union Medical Center." JA 1021 and 1422. Her report did not mention that Matthew had suffered an adrenal crisis after his medication was reduced by more than half, or the appointment of the GAL. Id. Means' report states that when she arrived at the hospital, Matthew was wearing a t-shirt and an adult brief that was unfastened on one side, with his public hairs visible from the door. JA1021. Her case notes state that "Medical staff administerd prescribed medications to Matthew" and that "all Matthw (sic) medical, physical and social needs are being met." JA 1022. Matthew had missed two weeks of the final semester of his senior year at high school, visits with his family were restricted to only one hour a week, under Means' watchful eye, and the GAL still had not made contact with him. JA1022. Means concluded her report by saying that "Union Medical Center (sic) currently meeting the needs of Matthew Parkins." Id. Means again discussed "outside placement" with hospital social worker Bradley and called UCDSNB employee Barber again. JA1222.

On May 7, 2018, Matthew's cortisol levels remained at a dangerously low level and Means

denied the request of Matthew's grandmother to visit him. JA69, 133, 148, 150, 1025, 1222.

On May 8, the District Director of SCDDSN sent a letter addressed to Matthew, not to his home address or to his GAL, but to the UCDSN Board. JA882. That letter purported to inform Matthew that SCDDSN had approved his request for residential placement and that he could choose placement from any of the 28 residential providers listed. JA884. That right to choose was never communicated to Matt or to Matthew's court-appointed GAL.

Medicaid waiver participants can receive respite services in an ICF/ID without losing their Medicaid waiver "slot," but before a client can be admitted to an ICF/ID on a long-term basis, the local SCDDSN board must dis-enroll him from the waiver program. In order for the facility in Laurens to be paid for services provided in their ICF/ID, Matthew had to be dis-enrolled from the waiver.

On May 9, 2018, Means, Ramage (the residential director of the Laurens County ICF/ID), Bradley and Barber met with Matthew at the hospital that morning. JA1028-1032. Bradley agreed, without giving notice to Matthew's GAL or his parents, to produce the records Ramage needed for Matthew to be admitted to the ICF/ID in Laurens. JA1031-1032. In furtheance of this plan, Bradley contacted Means, who wrote in her case notes:

> Angela Barber informed Case Manager Means, Laurens DDSN is aware of individuals whose name is on the list allowed in client's room unless permission is provided by DSS.

JA 1031-2032. Bradley provided the records to Ramage. JA897-898, 1028-1032. Conspicuously absent from that meeting were Matthew's court-appointed GAL, his parents, Bagnal or Mullis.

On the same day as that clandestine meeting, May 9, 2018, without the consent of Matthew's GAL or his parents, as alleged in Paragraph 93 of the amended complaint Matthew

was administered a psychotropic drug used to treat schizophrenia, Xyprexa, despite Matthew never having been diagnosed with or shown signs of schizophrenia. JA750. This caused Matthew to suffer "episodes of violent rocking and moaning, lasting around 20 minutes each time." Id. Petitioners alleged that this drug was administered for the improper purpose of controlling his behavior once admitted to the ICF/ID.

Ramage, Bradley and Means agreed at that meeting that Matthew would be admitted to the ICF/ID on Monday, May 14, 2018 and Bradley made arrangments to provide "transportation to him through Medicaid." JA898-899. Barber agreed to "go ahead and dis-enroll him from the ID/RD Waiver" and she called Bradley to make sure that the hospital had set up transportation on Monday. JA898. Bradley reconfirmed to Barber that she "had arranged to pick him up and take him to Clinton Manor." Id.

On May 10, 2018, Barber went to the school to obtain Matthew's school records that Ramage requested. JA896-897. She also completed the Notice of Disenrollment from the Medicaid waiver, to be effective on May 11, 2018. JA894-895. Barber reported in her SRHCS case notes that "He will be admitted into the Clinton Manor ICF on 5-14-18." Id. The reason provided for the dis-enrollment from the ID/RD waiver was that Matthew "is being admitted into an ICF/IID." Id. A copy of the dis-enrollment was sent to Means and SCDDSN, but not to Matthew's GAL or to his parents. Id.

No one had completed the preadmission assessment required by the Nursing Home Reform Act (PASARR) when these Respondents solidified their plan to admit Matthew to the most restrictive and expensive type of placement in the SCDDSN system.

It was not necessary to dis-enroll Matthew from the ID/RD waiver if the placement in the

ICF/ID was intended to be temporary. Petitioners' Opening Brief at 33-34. There was a years-long waiting list to obtain a waiver "slot." JA1090-1091. The waiver program allows participants to receive temporary "respite" services in an ICF/ID setting without losing their eligibility for the waiver or their hard-to-come-by "slot" in that program. Id. Mullis testified in her affidavit that in her forty years working in the SCDDSN system, she had never "known DDSN to place a client in an ICF/ID before attempting to place the individual with family members." JA1089-1091. According to Mullis, an ICF/ID "is always the last choice, after all less restrictive opions have been exhausted." Id. See also Expert Report of Jerry Mize at JA1107.

Without notice to the court, Matthew's GAL or his parents, on May 11, 2018, Means signed forms to admit Matthew to the ICF/ID. JA1467-1481. Means grossly exceeded any authority granted to her by the SCOAPA or the family court by signing an authorization to allow the director of the Laurens SCDDSN board to sign medical consent forms for "medical, surgical, psychiatreic, or dental procedures." Id. She also authorized the board to purchase and throw away Matthew's clothing, to apply for financial benefits and to control his personal funds. Id.

May 11, 2018 supervised family visit

Matthew's parents and grandparents arrived at the hospital for their weekly one-hour visit supervised by Means on Friday morning, May 11, 2018. JA158. When Means realized that Matt was accompanied by a lawyer, she demanded to know who had helped him get that lawyer. JA142 at paragraphs 48-50. She demanded that the lawyer stop taking photographs of the bruises on Matthew's exposed torso. Id.

Matthew's family was informed for the first time that he would be moved from the hospital on Monday, May 14, 2018, purportedly to be admitted to a group home in Union County.

Id. at paragraphs 52-53. That was not true. Respondents intended that Matthew be admitted to the most restrictive setting in the SCDDSN setting - in another county. His family was not informed that Matthew had suffered an adrenal crisis, or that he had been receiving less than half the dosage of adrenal medications order by Dr. Amrhein that Matt religiously administered at home.

Respondents scramble

That afternoon, Barber called the SCDDSN State Office asking that Matthew not be dis-enrolled from the waiver. JA894. The director of the Union County DDSN Board reported to the state office that "the case had been very different than any we had been involved with in the past as we had honsetly had very little contact with DSS." JA893, 922-923. She reported that in the many years the board served Matthew, no one had suspected any abuse in the home. Id. She could not explain why DSS would have claimed to have called other boards seeking placements, when her board that prepared his plan of care and had served Matthew for years were not contacted. Id.

The director instructed her employee, Barber, to "find out exactly what the allegation against the parent is from DSS..." Id. Barber explained that the language she provided on the request to SCDDSN for critical placement was provided to her by Means. JA881.

The GAL meets with Matthew

Matthew's GAL attempted to call Means on April 26, 2018, but Means claimed that she was "not available until May 21, 2018." JA1454. The GAL first attempted to make contact with Matthew on May 15, 2018, one day short of a month after he was taken into state custody. The GAL was denied access to Matthew at the hospital. JA1452-1455. The nurse on duty contacted social worker Jan Bradley, who informed the nurse that the GAL may not visit without permission of DSS. Id. Because Means was "not available" until May 21, two days before the merits hearing,

the GAL had to call DSS supervisor, Calvin Hill, who made arrangements for the GAL to meet with Matthew. Id. This delay gave the hospital and DSS time to prepare Matthew for the GAL's visit. (So that he was covered, his diaper was firmly attached and his public hairs were not exposed from the hallway.)

The GAL was not informed by the hospital or DSS that Matthew had suffered an adrenal crisis, that his adrenal medications had been administered at a dose lower than he was receiving at home, or about the pending plan to institutionalize Matthew in another county. Id. Means still had not provided the GAL with the background material she had requested to prepare for the merits hearing.[18] JA1454-1456.

Deadline for DSS' "comprhensive evaluation" passes and court issues its "72 Hour Order"

S.C. Code 43-35-45(D) requires DSS to have conducted "a comprehensive evaluation of the vulnerable adult" and to provide a written report five working days before the hearing on the merits "to the court, the guardian ad litem, and the attorney." Thus, DSS's final report was due on May 16, 2018, five working days before the merits hearing still scheduled for May 23, 2018.[19] That Report was never provided to the court, to the GAL or to Petitioners' attorneys. It was not included in the records DSS provided during discovery in this federal case.

On May 16, 2018, the family court issued a "72 Hour Hearing Order" from the probable cause hearing held in that court on April 18, 2018. Order Appx. at 112-115. One month after Matthew was taken into state custody, the court authorized DSS to provide only "routine and

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[18] By that date, Matthew's testosterone level was undetectable, but no one at SRHS had contacted Dr. Amrhein, or any endocrinologist. JA1222.

[19] Petitioner's Opening Brief inadvertently stated that the GAL Report was due on May 18, 2018, but the statute requires five *working* days. Opening Brief at 43.

emergency medical care," authority not granted by statute nor included in its April 18, 2018 order. Id. That order did not authorize DSS to arrange for or provide consent to institutional placement.

Calvin Hill called the UCDSN Board the day that the DSS "comprehensive evaluation" was due, asking for the first time if they had a male bed available in Union County. JA742. Hill reported that DSS would "go out and to complete a home study." JA1642.

SRHS submits PASARR to SCDHHS

It was not until May 17, 2018 - more than a week after the Respondents jointly agreed to institutionalize Matthew - that Bradley submitted the preadmission screening (PASARR) assessment required by 42 U.S.C. 1396r of the Nursing Home Reform Act to DHHS. JA704.

Dr. Amrhein is contacted and Matthew is discharged home

More than a month after Matthew was removed from the his home and the custody of his father, Dr. Amrhein was contacted for the first time on May 18, 2018. Matthew was discharged without a court order that same day. JA1222, 1686. Means contacted the GAL for the first time, advising her that DSS "was going to dismiss the case," but DSS did not file a notice of dismissal, or advise Matt's attorney of its intent not to go forward with the charges against Matt and Andrew.

The merits hearing

By May 21, 2018, Means still had not provided the GAL the background material DSS was required to provide, and DSS was five days past the statutory deadline established at S.C. Code 43-35-45(FD) for providing its "comprehensive evaluation" to the court. JA1454-1455. Petitioners alleged in their amended complaint that Means, Hill and DSS "intentionally obstructed Plaintiff's access to records on May 21, providing only every other page." JA135-136. The

complaint alleges that the hospital refused to discuss Matthew's treatment records with his father, claiming that Matthew had not been there to receive medical treatment.[20] Id. at paragraph 116.

On May 22, 2018, Matt's attorney contacted the GAL, providing her with photographs and contact information for Matt, Bagnal and Mullis, which Means had not provided to the GAL.[21] JA1454-1455. The GAL contacted both Bagnal and Means the day before the merits hearing and they described Matt as an "exceptional father" who would never injure his son. JA 1455. 116. Mullis advised the GAL that she had visited Matthew, who was wearing shorts on April 14, 2018 and she did not notice any bruises. Id. The GAL recommended in her May 23, 2018 report that the case be dismissed.

At the merits hearing, Matt's counsel presented the letter Dr. Amrhein wrote to the court on May 22, 2018 reporting:

> The recent bruises noted on Matthew were clearly the result of managing his day-to-day care and NOT indicative of any type of child abuse. His father is a kind, loving, caring individual who has devoted his entire life to the care of his children. I have nothing but respect for Matt Sr and consider him one of the best father's in my rather large practice. I am very dismayed that he is having to go through the experience of DSS removing Matthew from he home and then having to be told he has been "abusing" his son. I understand the responsibility of Matthew's school and DSS in addressing these issues, but they should have contacted me first before removing him from the home since I have known this family intimately for many years. I was never contacted throughout the entire process.
>
> In summary, I can attest without reservation that Matthew Sr is an incredible father incapable of any type of abuse or neglect for his children. The bruises sustained by his son Matthew are clearly the result of the necessity of day-to-day care of this very large young man with severe developmental delay who frequently struggles

[20] The hospital provided hundreds of pages of medical records to Matt's counsel less than 24 hours before the merits hearing.

[21] Matt had not retained an attorney when the family court issued its order appointing the GAL on April 26 or April 27, 2018 and Means had not provided counsel the name of the GAL.

> with his father during the caretaking process making it very difficult. I would request that DSS dismiss these charges immediately and allow father to continue providing care for his children in the home setting.

JA161.

DSS did not move to dismiss the case until the day of the merits hearing on May 23, 2018. Order Appx. 111-112.

REASONS FOR GRANTING THE PETITION

I. Question I. Whether the state's removal of an intellectually disabled adult from his home and family by application of a standard of proof lower than the preponderance of the evidence violated rights protected by the Fourteenth Amendment that are enforceable under Section 1983. Whether those rights were violated when the adult child and the parent (1) were not served with the charges prior to the hearing, (2) were not represented by legal counsel or a guardian ad litem, (3) where the parent was prohibited from testifying, and (4) where the state violated due process protections established by state and federal statutes.

In *Mathews v. Eldridge,* 424 U.S. 319, 332 (1976), this Court held that procedural due process "imposes constraints on governmental decisions which deprive individuals of "liberty" ...interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment. That case established that the right to be heard before suffering a grievous loss is a principle basic to our society. Id. In *Zinermon v. Burch,* this Court held that involuntary civil commitment for any purpose constitutes a "significant deprivation of liberty that requires due process protection." 494 U.S. 113 (1990). In *Zinermon,* this Court held that the individual who had mental illness and was involuntarily committed to a mental hospital had a right to a hearing, including an examination by an independent expert and other procedural safeguards. When those procedural safeguards were not provided, this Court held that the patient with mental illness was entitled to bring an action under 42 U.S.C.S. § 1983 against the physicians, hospital administrators, staff

members, and others, for an alleged violation of his due process rights.

This case presents an issue of critical importance, i.e. how those standards apply to individuals who have intellectual disabilities. The Fourth Circuit affirmed this case where a severely intellectually challenged individual, who had lived successfully at home under the care of his father, was involuntarily removed and placed in state custody without counsel, without notice to either parent, without medical testimony at the hearing and without allowing the father to testify at the removal hearing.

The SCOAPA does not establish the standard of proof for removing a vulnerable adult from his home. The Fourth Circuit and the lower courts disregarded the standard established by the South Carolina Supreme Court *In the Interest of Doe v. S.C. Dep't of Soc. Servs.*, 407 S.C. 623, 637-638 (2014) by failing to apply the required "clear and convincing evidence" standard to remove a vulnerable adult from the home.

In this case, the Fourth Circuit failed to recognize what the Supreme Court recognized in *Doe v. DSS*, i.e. that "[w]ithout question, an involuntary removal under the Act deprives a person of his liberty..." Id. Citing U.S. Const. amend. XIV, § 1 ("[N]or shall any state deprive any person of life, liberty, or property, without due process of law.") and S.C. Const. art. I, § 3 ("[N]or shall any person be deprived of life, liberty, or property without due process of law."). The failure of the Fourth Circuit to apply that that "a heightened standard of proof, i.e., clear and convincing evidence" to remove a vulnerable adult from his or her home places at risk other intellectually disabled adults living in South Carolina, and perhaps in other states in the Fourth Circuit.

It appears that no other circuit has adopted a standard of proof lower than the preponderance of the evidence for the involuntary removal of an intellectually disabled person

from his home. This case gives the Court an opportunity to clearly define the obligations of the state, as well as the rights of the intellectually disabled adult and the parents in involuntary removal and commitment cases.

Petitioners pray that the Court will reverse the lower courts in this case and will rule that the Respondents in this case violated important due process rights of Petitioners, thereby entitling Petitioners to a ruling in their favor under 42 U.S.C. 1983.

Question II. Whether Respondents violated rights protected under the Americans with Disabilities Act and 42 U.S.C. 1396n(c)(2) by denying repeated requests to provide services in the least restrictive setting and the courts below applied the wrong standards for an award of injunctive relief and compensatory damages. Whether the lower courts erred by disregarding the resources of the state, and dismissing Petitioners' claim alleging intentional violation of the ADA, 42 U.S.C, 1396n(c)(2) and state law by acting together in furtherance of an illegal purpose to prevent the individual's return to his home and family.

The concurring justices in *A.J.T. v. Osseo Area Schools*, 606 U.S. __ (2025) indicated interest in hearing a case that could clarify and establish the correct standards for determining whether a plaintiff whose rights have been violated under the Americans with Disabilities Act is entitled to compensatory damages. This case squarely presents that question.

The Fourth Circuit failed to apply the correct standards in ruling that Petitioners' rights to receive services in the least restrictive setting were not violated. Applying the criteria this Court established in *Olmstead v. L.C.*, 527 U.S. 581 (1999), Matt is clearly a "qualified individual with disabilities, for many years, the state's professionals determined that he could live successfully in the community, he did not oppose receiving services in the community, that was and remains his choice. The courts below failed to consider an important element this Court established in *Olmstead:* whether immediate relief would be inequitable, given the responsibility the State has

undertaken for the care and treatment of a large and diverse population of persons with mental disabilities. Id. at 604.

Petitioners showed that the services requested would be less expensive than the institutional placements sought by the Respondents. Petitioners alleged, and provided evidence that funds allocated to serve intellectually disabled persons living at home were being diverted by the state for improper purposes.

Petitioners provided evidence below that between 2012 and some time after 2019, the state agencies failed to provide federally mandated cost reports for programs operated by SCDDSN. The Mercer Report at JA1732-1733 reports that SCDDSN and SCDHHS implemented the Intergovernmental Transfer (IGT) method of accounting for funds provided by the State General Assembly and the federal government to fund ICF/ID facilities. The United States General Accounting Office has long criticized this funding scheme, because it has allowed state to divert funds intended to be spent providing Medicaid services to be spent for other purposes, in some cases, allowing states to divert those funds back into the State's General Fund.

GAO reported that these financing schemes allow states to spend Medicaid funds "at their own discretion" with Medicaid funds "deposited the funds into state general funds or other special state accounts that could be used for non-Medicaid purposes or to supplant the states' share of other Medicaid expenditures." See cover page at https://www.gao.gov/assets/gao-04-574t.pdf.

These issues are of extreme importance during this time when persons who rely on Medicaid programs are at risk of services being reduced due to funding cuts.

Petitioners request that the Court will grant certiorari to allow the parties to fully brief

these issues.

Question III Whether a state law providing that a complaint must be dismissed unless it is accompanied by an expert affidavit may be applied in federal court when the defendant elects to remove the case to federal court.

This Court recently granted certiorari in *Berk v. Choy,* 2025 U.S. LEXIS 1010, cert. granted March 10, 2025 addressing the dismissal of a suit against health care provider based on lack of affidavit of merit. This case involves the same issue, because the district court dismissed Petitioners' claims against the health care providers on the same grounds.

Given the short amount of time since this Court granted certiorari in that case, Petitioner respectfully requests an opportunity to file a supplement to this petition to more fully address this question.

CONCLUSION

Petitioners respectfully request that the Court will grant certiorari on the questions presented and will order full briefing on those issues.

Respectfully submitted,

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