No. 21-60772

In the United States Court of Appeals for the Fifth Circuit

UNITED STATES OF AMERICA,
Plaintiff-Appellee

v.

THE STATE OF MISSISSIPPI,
Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

BRIEF OF AMICI CURIAE AARP AND AARP FOUNDATION SUPPORTING PLAINTIFF-APPELLEE AND URGING AFFIRMANCE

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CERTIFICATE OF INTERESTED PARTIES

Mississippi v. United States, No. 21-60772

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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AARP and AARP Foundation

The Internal Revenue Service has determined that AARP is organized and operated exclusively for the promotion of social welfare pursuant to Section 501(c)(4) of the Internal Revenue Code and is exempt from income tax. The Internal Revenue Service has determined that AARP Foundation is organized and operated exclusively for charitable purposes pursuant to Section 501(c)(3) of the Internal Revenue Code and is exempt from income tax. AARP and AARP Foundation are also organized and operated as nonprofit corporations under the District of Columbia Nonprofit Corporation Act.

Other legal entities related to AARP and AARP Foundation include AARP Services, Inc., and Legal Counsel for the Elderly. Neither AARP nor AARP Foundation has a parent corporation, nor has either issued shares or securities.

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STATEMENT OF THE IDENTITIES AND INTERESTS OF AMICI CURIAE[1]

AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering Americans 50 and older to choose how they live as they age. With nearly 38 million members and offices in every state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, AARP works to strengthen communities and advocate for what matters most to families, with a focus on financial stability, health security, and personal fulfillment. AARP's charitable affiliate, AARP Foundation, works to end senior poverty by helping vulnerable older adults build economic opportunity and social connectedness.

Among other things, AARP and AARP Foundation fight in the legislature and in courts to support the rights of older adults with disabilities to stay in their community as they age by protecting their rights to receive community-based services and supports in the most integrated settings. AARP and AARP Foundation also work to remove barriers to accessing government programs and services. To support this goal, Amici conduct research, advocacy, and litigation. *See e.g.,*

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[1] Amici Curiae certify that no party or party's counsel authored this brief in whole or in part, or contributed money intended to fund its preparation or submission. Amici curiae also certify that only Amici Curiae provided funds to prepare and submit this brief. *See* Fed. R. App. Proc. 29(a)(4)(E).

All parties have consented to the filing of this brief. *See* Fed. R. App. P. 29(a)(2).

Brown v. District of Columbia, 928 F.3d 1070 (D.C. Cir. 2019)*; Darling v. Douglas (Cota v. Maxwell-Jolly)*, 688 F. Supp. 2d 980 (N.D. Cal. 2010)*; Pitts v. Greenstein,* No. 10-635-JJB-SR, 2011 WL 1897552, at *1 (M.D. La. May 18, 2011).

Amici submit this brief to provide perspective on the impact of the Americans with Disabilities Act and the U.S. Supreme Court's decision in *Olmstead v. L.C.* to ensure that public entities' fulfill their affirmative obligation to provide services to older adults and other persons with disabilities in the most integrated settings appropriate to their needs and remove barriers to community integration.

SUMMARY OF ARGUMENT

The district court correctly determined that the State of Mississippi administers its services to people with severe mental illness in a manner that violates Title II of the Americans with Disabilities Act of 1990 ("ADA"). The ADA is a comprehensive civil rights law for persons with disabilities. One of the ADA's central missions is to reverse years of discrimination against persons with disabilities by integrating them into the community and ending their unjustified segregation in institutions.

Before the ADA's enactment, persons with disabilities were discriminated against in all aspects of life, including in public accommodations, housing, government services, education, employment, and transportation. Historically, and during much of the twentieth century, nearly every state considered persons with disabilities to be "manifestly unfit" and passed laws to keep them in institutions and away from the rest of society.

Confronting that history, Congress enacted the ADA to prohibit state and local governments from discriminating against persons with disabilities by excluding them from participating in, or receiving benefits from, government services, programs, or activities. The statute and its implementing regulations require state and local governments to administer services, programs, and activities

in the most integrated setting appropriate to the needs of qualified individuals with disabilities. This is known as the ADA's "integration mandate."

In its landmark decision in *Olmstead v. L.C.*, the U.S. Supreme Court ruled that unnecessary segregation of people with disabilities violates the ADA. 527 U.S. 581 (1999). It further held that public entities are required to provide community-based services to persons with disabilities when (a) such services are appropriate; (b) the affected persons do not oppose community-based treatment; and (c) community-based services can be reasonably accommodated, considering the resources available to the entity and the needs of others who receive disability services from the entity. Public entities are required to modify their policies, procedures, or practices when reasonably necessary to avoid discrimination. A public entity can only avoid this obligation if the public entity proves that the requested modifications would "fundamentally alter" its service system.

The ADA and the Supreme Court's *Olmstead* decision have been the catalyst that has enabled people with disabilities to connect to community-based services so they can age in their own communities, rather than being forced to go into institutional settings to receive care.

In this case, the district court reviewed the evidence, applied the law, and determined that the State violated the ADA. An injunction is warranted to ensure that Mississippians with severe mental illness receive care in the most integrated

settings appropriate for their needs. The district court's decision should be affirmed.

ARGUMENT

I. The District Court's Decision Is In Accordance With The Americans With Disabilities Act's Purpose To Give People Who Have Disabilities Meaningful Access To Community-Based Services And Should Be Affirmed.

The district court properly applied the Americans with Disabilities Act of 1990 ("ADA") and the Supreme Court's decision in *Olmstead v. L.C.* ("*Olmstead*") to determine that the State of Mississippi violated the ADA. A key tenet of the ADA is to end and remediate the historic discrimination against persons with disabilities and integrate them into the community. The ADA's mandate that public entities provide services to persons with disabilities in the most integrated setting appropriate to their needs has been a lifeline for older adults and other persons with disabilities. This mandate has forced changes that enable them to receive services in the community as they age and avoid unjustified and unnecessary segregation.

A. Congress's Intent In Enacting The ADA Was To Reverse Years of Discrimination Against People With Disabilities.

The passage of the ADA was a watershed moment for millions of Americans with disabilities. 42 U.S.C. § 12101, *et seq*. After decades of efforts to end discrimination, the ADA mandated that people with disabilities have the civil right

to equal access to the basic institutions of government and to meaningfully participate in society. *Id.*

Before the ADA's enactment, persons with disabilities faced discrimination in all aspects of life, including in public accommodations, housing, government services, education, employment, and transportation. *See* Timothy Cook, *The Americans with Disabilities Act: The Move to Integration*, 64 Temp. L. Rev. 393, 399-415 (1991) [*Move to Integration*]. Even as recently as the twentieth century, virtually every state considered persons with disabilities to be "manifestly unfit," "inferior," and "dangerous," and passed laws to keep them away from the rest of society. *Id.*; *see also* Marcia Pearce Burgdorf and Robert Burgdorf Jr., *A History of Unequal Treatment*, 15 Santa Clara Lawyer 855, 861-68, 883-891 (1975) (discussing compulsory segregation and "ugly laws" that prohibited persons with physical disabilities from appearing in public).

States routinely segregated persons with disabilities into institutional settings and enforced policies that left them isolated. *Move to Integration*, at 404-15. This discriminatory treatment included requiring them to move to institutional settings to receive their services, when they could have and should have been able to remain in their communities. *See id.* at 412-14.

People with mental illness were among the people who experienced abuse and neglect as a result of their disability. *See* Mary De Young, *MADNESS: AN*

AMERICAN HISTORY OF MENTAL ILLNESS AND ITS TREATMENT 103-104, 95, 110-118 (McFarland & Company 2010) (describing early treatments for mental illness). Many people were institutionalized and given brutal, inhumane treatments. *See id*. at 103, 113, 164-168, 83-89, 179-180 (discussing use of painful, experimental surgeries in institutions during the twentieth century). Others were institutionalized, given no treatment at all, and left languishing. *See id*. at 95, 103-105, 111-115.

In 1973, Congress passed the first federal civil rights protection for persons with disabilities, Section 504 of the Rehabilitation Act. Pub. L. No. 93-112, 87 Stat. 355 (codified, as amended, at 29 U.S.C. § 794). That law prohibits discrimination against persons with disabilities in programs that receive federal financial assistance. *Id*. In 1975, Congress passed the Developmental Disabilities Assistance and Bill of Rights Act (DD Act). Pub. L. No. 94-103, 89 Stat. 486 (1975), *repealed and replaced by* DD Act of 2000, Pub. L. No. 106-402, 114 Stat. 1677 (codified at 42 U.S.C. § 15001 *et seq.*). That law provided that treatment and services for persons with developmental disabilities should be provided in the least restrictive setting for the person's liberty. 42 U.S.C. § 6010 (repealed and replaced by § 15009 (a)(2)). Despite the passage of these and other laws, widespread discrimination and segregation of persons with disabilities continued.

In 1990, Congress passed the ADA to end and remediate the ongoing discrimination and segregation of persons with disabilities. *See, e.g.*, 42 U.S.C. § 12101(a)(2) (stating that segregation of persons with disabilities continues to be a "serious and pervasive social problem"). The ADA's passage came after a long three-year process that included 14 public hearings by the House of Representatives and the Senate, 63 public forums (at least one in each state), lengthy floor debates, and negotiations with stakeholders. *Move to Integration*, at 393-94.

The hearings and public forums included powerful witness testimonies from persons with disabilities detailing how they had been discriminated against and demeaned because of their disability. *Id.* at 408-11, 436-37, 458; S. Hrg. Rpt. 100-926 (1988).[2] Witnesses explained the isolation and abuse they experienced in institutional settings, and how being cut off from the rest of society harmed every aspect of their lives. *Id*; *Americans with Disabilities Act of 1988: Hearing on H.R. 4498 Before the Subcomm. on Select Educ. of the H. Comm. on Educ. and Lab.*, 100th Cong. (1988) (discussing effects of institutionalization). Some witnesses described feeling as if they were never recognized as full citizens. *See* S. REP. NO. 116, 101st Cong., 1st Sess., at 16 (1989) (quoting witness's statement that "[t]his

[2] https://dolearchivecollections.ku.edu/collections/ada/files/s-leg_752_002_all.pdf.

forced acceptance of second-class citizenship has stripped us as disabled people of pride and dignity . . . . [T]his stigma scars for life.")

As demonstrated in the legislative history, Congress considered the devastating impact that segregation and isolation had on persons with disabilities when it enacted the statute. *See e.g.*, 136 CONG. REC. H2599 (daily ed. May 22, 1990) (statement of Rep. Dellums) ("The [ADA] is a plenary civil rights statute designed to halt all practices that segregate persons with disabilities and those which treat them inferior [sic] or differently. By enacting the ADA, we are making a conscious decision to reverse a sad legacy of segregation and degradation."); 136 CONG. REC. H2449-2450 (daily ed. May 17, 1990) (Statements of Rep. Coyne and Rep. AuCoin) (documenting that persons with disabilities were still excluded from multitude of services and subjected to stereotypes, fear, and misinformation); S. REP. NO. 116, at 8-9 (1989) ("Our society is still infected by the ancient, now almost subconscious assumption that people with disabilities are less than fully human and therefore are not fully eligible for the opportunities, services, and support systems which are available to other people as a matter of right. The result is massive, society-wide discrimination.")

Indeed, in its findings supporting the ADA's enactment, Congress stated that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against

individuals with disabilities continue to be a serious and pervasive social problem." 42 U.S.C. § 12101(a)(2). Further, "discrimination against individuals with disabilities persists in such critical areas as . . . housing, public accommodations, … institutionalization, . . . and access to public services." *Id.* § 12101(a)(3).

Therefore, Congress determined that "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals." *Id.* § 12101(a)(7). The ADA's purpose, in sum, is to "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." *Id.* § 12101(b)(1).

B. The ADA And The U.S. Supreme Court's Decision In *Olmstead v. L.C.* Mandate That States Give Persons With Disabilities Meaningful Access To Community-Based Services And Supports.

Title II of the ADA and its regulations are intended to ensure the right of people with disabilities to receive services in the most integrated settings appropriate to their needs. To begin with, Title II prohibits public entities from discriminating against persons with disabilities when providing any public services. 42 U.S.C. § 12132. It mandates 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." *Id*. Title II regulations require

public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d). They also state that the "most integrated setting" is a setting that "enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible." *Id.* Pt. 35 App. B. This is known as "the integration mandate."

In interpreting Title II in its landmark *Olmstead v. L.C.* decision, the Supreme Court held that the "unjustified institutional isolation of persons with disabilities is a form of discrimination." 527 U.S. at 600. Therefore, under *Olmstead*, public entities must conform their actions to Title II's integration mandate by "administer[ing] services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities," *id.* at 592, and provide reasonable accommodations to move people with disabilities institutionalized in segregated nursing facilities to integrated settings when: (1) community placement is appropriate; (2) the individuals do not oppose community placement; and (3) return to the community can be reasonably accommodated, taking into account the resources available to the entity and the needs of others who receive disability services from the entity. *Id.* at 607.

The Supreme Court also explained that "[r]ecognition that unjustified institutional isolation of persons with disabilities is a form of discrimination

reflects two evident judgments." *Id.* at 600. "First, institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life." *Id.* "Second, confinement in an institution severely diminishes everyday life activities of individuals, including family relations, social contacts . . . economic independence, educational advancement, and cultural enrichment." *Id.* at 601. Accordingly, it concluded, "[t]reating people in institutions when they wish to and could be treated in the community is discrimination because of disability." *Id.*; *see also Brown v. Dist. of Columbia*, 928 F.3d 1070, 1073 (D.C. Cir. 2019).

Thus, Title II's integration mandate and *Olmstead* require States to end the segregation of persons with disabilities in public programs and services. This mandate applies both to people who are currently institutionalized and to people who are at serious risk of institutionalization. *See, e.g.*, *Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175, 1181 (10th Cir. 2003) (the integration mandate "would be meaningless if plaintiffs were required to segregate themselves by entering an institution before they could challenge an allegedly discriminatory law or policy that threatens to force them into segregated isolation"); *Pitts v. Greenstein*, No. 10-635-JJB-SR, 2011 WL 1897552, *3 (M.D. La. May 18, 2011) ("A State's program

violates the ADA's integration mandate if it creates the *risk* of segregation; neither present nor inevitable segregation is required.") (emphasis in original).

Mississippi, like all public entities, has an affirmative obligation under the ADA to provide community-based treatment for persons with disabilities if such treatment is desired and appropriate and can be reasonably accommodated, considering the state's resources and the needs of others with similar disabilities. *See Olmstead*, 527 U.S. at 607. When public entities fully comply with this obligation, people with disabilities have the opportunity to live and receive services in the community-based settings, and experience the quality of life afforded to other citizens.

C. The ADA And The Supreme Court's Decision In *Olmstead* Have Brought About Needed Changes That Have Enabled Older Adults And Other People With Disabilities To Receive Services In The Community And Lead More Enriching, Independent lives.

The ADA and *Olmstead* place an affirmative obligation on public entities to connect older adults and other persons with disabilities to community-based services where appropriate for their needs. *See Olmstead*, 527 U.S. at 600-03, 607. As a result, the enforcement of the ADA and *Olmstead* litigation have been a vital tool for older adults to age in the community as opposed to being forced to live in institutions to receive care.

As people age, disability becomes more common. About forty percent of adults age 65 and older have at least one disability. Centers for Disease Control

and Prevention, *CDC: 1 in 4 US Adults Live with a Disability* (Aug. 16, 2018).[3] Though they may have a disability, older adults still want to age in the community and receive long-term care services in integrated community-based settings. *See* Joanne Binette, *2021 Home and Community Preferences Survey: A National Survey of Adults Age 18-Plus*, AARP Research (Nov. 2021).[4] Nearly 80% of adults age 50 and older report that they want to stay in their homes and communities as they age, as opposed to living in an institutional setting like a nursing facility. *Id.* The COVID-19 pandemic has put a fine point on why it is essential that older adults have access to community-based services as an alternative to institutionalized nursing facility care. From January 2020 to February 2022, 149,919 nursing facility residents died from COVID-19. *See* AARP Pub. Pol. Inst., *AARP Nursing Home COVID-19 Dashboard – U.S. Fact Sheet* (last updated Mar. 17, 2022).[5]

Simply put, the enforcement of the ADA and the Supreme Court's *Olmstead* decision has resulted in older adults with disabilities being able to access community-based services and live independent lives instead of being forced to

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[3] https://www.cdc.gov/media/releases/2018/p0816-disability.html.

[4] https://www.aarp.org/research/topics/community/info-2021/2021-home-community-preferences.html.

[5] https://www.aarp.org/ppi/issues/caregiving/info-2020/nursing-home-covid-states.html.

live in institutions to receive care. For example, in *Pitts v. Greenstein*, older adults with disabilities from Louisiana sued the State of Louisiana under the ADA after it proposed to reduce the available care hours in its Medicaid Long-Term Personal Care Services (LT-PCS) program. 2011 WL 1897552, at *1. The LT-PCS program provided individuals with disabilities a personal care worker to assist with basic tasks in their home in the community. *Id.* Without the personal care worker's assistance, many participants could not continue to live in their own homes. *Id.* Though each plaintiff qualified for about 40 in-home hours, the proposed reduction capped that number at 32. *Id.* The plaintiffs alleged that the reduction would put them at risk of unnecessary institutionalization. *Id.*

In 2012, the parties reached a Settlement Agreement that helps older adults continue to remain in the community while they receive their care. Settlement Agreement, *Pitts v. Greenstein*, No. CIV.A. 10-635-JJB-SR (M.D. La. Jan. 11, 2012); *see also* Order, *Pitts v. Greenstein*, No. CIV.A. 10-635-JJB-SR (M.D. La. Feb. 17, 2012), ECF No. 101 (approving Agreement). As part of the Agreement, Louisiana committed to creating expedited enrollment slots in its Community Choice (CC) Waiver program as an alternative option for the affected population. *See* Settlement Agreement § 3. The CC Waiver program, which also provides community-based personal services, normally had a four-year waiting list at the time. *See Pitts v. Greenstein*, No. CIV.A. 10-635-JJB-SR, 2011 WL 1897552, at

*1. The Settlement also required Louisiana to work to create 700 more Waiver slots for the class members. Settlement Agreement § 6. Without the litigation, thousands of Louisiana citizens who wished to remain in their homes would have been forced into institutions like nursing facilities.

Another example is *Chambers v. City and Cnty. of San Francisco,* No. 3:06CV06346, 2006 WL 3620263 (N.D.Cal. 2006). In that case, residents of Laguna Honda Hospital and Rehabilitation Center (LHH), a city-owned facility, sued the city and county of San Francisco, claiming its policies and practices caused their unnecessary institutionalization at the facility. *See* Compl. at 1, *Chambers*, 2006 WL 3620263. Although they were institutionalized, each plaintiff preferred to live in the community and was found to be capable of living in the community. *Id.*

In 2008, the parties reached a Settlement Agreement designed to prevent the plaintiffs' unnecessary institutionalization. *See* Order Granting Final Approval of Settlement Agreement, *Chambers*, No. C06-06346 (N.D.Cal. Sept. 18, 2008). The Agreement enhanced the community-based housing and service options. *Id*. Among other things, it required: 1) the creation of a diversion and community integration program with a goal of placing individuals with disabilities in the most integrated setting that is appropriate to their needs and preferences; 2) San Francisco to increase access to Medicaid home and community-based waiver

services; 3) increased access to affordable, accessible community housing, including a rental subsidy program, and 4) LHH to reduce its capacity when rebuilding and to prioritize short-term rehabilitation. *Id.* at § V-X.

A third example of how the ADA and *Olmstead* have been a lifeline for older adults with disabilities is *Darling, et al. v. Douglas, et al.,* No. C 09-3798 SBA (N.D. Cal. 2009). In that case, a class of older adults and other individuals with disabilities brought an action against California to enjoin the proposed elimination of the state Medicaid adult day health care (ADHC) program during a series of budget cuts. ADHC provided medical, physical, and mental health services to about 8,000 at-risk Medicaid beneficiaries. Without the services, or alternative options in place, thousands of Californians could have been unnecessarily institutionalized.

The case ended with a Settlement Agreement that required California to transition the ADHC program into a new community-based adult services managed care waiver program that did not have an enrollment cap. Settlement Agreement, *Darling, et al. v. Douglas, et al.*, No. C-09-03798 SBA (N.D. Cal. Dec. 13, 2011). The litigation helped ensure that the state would preserve critical community services and prevent unnecessary institutionalizations, even during an economic downturn.

Finally, in *Hutchinson ex rel. Julien v. Patrick*, the plaintiffs were a class of 9,000 individuals with acquired brain injuries who were institutionalized in Massachusetts nursing facilities despite qualifying for long-term care services under the Medicaid program. 636 F.3d 1 (1st Cir. 2011). The plaintiffs alleged Massachusetts had failed to offer services and programs for individuals with acquired brain injuries in integrated community settings. *Id.* The parties reached a comprehensive Settlement Agreement that established a plan to dramatically enhance community-based services in Massachusetts. Settlement Agreement, *Hutchinson ex rel. Julien v. Patrick*, 636 F.3d 1 (1st Cir. May 30, 2008). The Agreement required Massachusetts to: 1) develop a new, comprehensive community service system for Medicaid-eligible persons with brain injuries who were in long-term care facilities; 2) transition 1900 nursing and other facility residents to the community; 3) create a quality assurance and oversight program, and 4) provide outreach and education on the new changes.

As shown above, enforcement of the ADA and the Supreme Court's decision in *Olmstead* has resulted in older adults with disabilities being able to access community-based services and live independent lives. Here, the district court evaluated the evidence and determined that Mississippi violated the ADA's integration mandate. The ensuing injunction will provide older Mississippians and other persons with severe mental illness opportunities to receive services in the

most integrated setting appropriate to their needs. The district court's decision should be affirmed.

CONCLUSION

For the reasons set forth above, the district court's decision should be affirmed.

Dated: April 5, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2022, the foregoing Brief of Amici Curiae AARP And AARP Foundation Supporting Plaintiff-Appellee And Urging Affirmance was electronically filed with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: April 7, 2022

/s/ Maame Gyamfi
Maame Gyamfi

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limitation of Fed. R. App. P. 32(a)(7) and Circuit Rule 32(a)(2) because: this brief contains 3,848 words, (excluding the parts of the brief exempted by Fed. R. App. P. 32(f) as determined by the word counting feature of Microsoft Word 365 Version 2201.

2. This Petition complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this Petition has been prepared in a proportionally spaced typeface using Microsoft Word 365 Version 2201 in 14 point Times New Roman font.

Dated: April 5, 2022

/s/ Maame Gyamfi
Maame Gyamfi

United States Court of Appeals

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No. 21-60772 USA v. State of Mississippi
USDC No. 3:16-CV-622

Dear Ms. Gyamfi,

The following pertains to your Amici Curiae brief electronically filed on April 5, 2022.

We filed your brief. However, you must make the following corrections within the next 14 days.

You need to correct or add:

Table of authorities must list cases (alphabetically arranged), statutes, and other authorities, with references to the pages of the brief where they are cited, see FED. R. APP. P. 28(a)(3). **(Sections Cases, Legislative History and Other Authorities are not in alphabetical order.)**

Note: Once you have prepared your sufficient brief, you must electronically file your 'Proposed Sufficient Brief' by selecting from the Briefs category the event, Proposed Sufficient Brief, via the electronic filing system. Please do not send paper copies of the brief until requested to do so by the clerk's office. The brief is not sufficient until final review by the clerk's office. If the brief is in compliance, paper copies will be requested and you will receive a notice of docket activity advising you that the sufficient brief filing has been accepted and no further corrections are necessary. The certificate of service/proof of service on your proposed sufficient brief **MUST** be dated on the actual date that service is being made. Also, if your brief is sealed, this event automatically seals/restricts any attached documents, therefore you may still use this event to submit a sufficient brief.

Sincerely,

LYLE W. CAYCE, Clerk

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