No. _____

In the Supreme Court of the United States

MIGUEL LUNA PEREZ,
Petitioner,
v.
STURGIS PUBLIC SCHOOLS; STURGIS PUBLIC SCHOOLS BOARD OF EDUCATION,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Individuals with Disabilities Education Act (IDEA) preserves the rights of children with disabilities to bring claims under the Constitution and other federal anti-discrimination statutes, so long as they exhaust the IDEA's administrative procedures if their non-IDEA suit "seek[s] relief that is also available under [the IDEA]." 20 U.S.C. § 1415(*l*). In the decision below, the Sixth Circuit affirmed the dismissal of petitioner's claim under the Americans with Disabilities Act for failure to exhaust—even though that claim had been dismissed from petitioner's IDEA administrative proceedings, and even though petitioner had settled his IDEA claim with the school district to the satisfaction of all parties. The Sixth Circuit broke with eleven other circuits by holding that Section 1415(*l*)'s exhaustion requirement is not subject to a futility exception. The Sixth Circuit also held that Section 1415(*l*)'s exhaustion requirement applies even when the plaintiff is seeking money damages, a remedy that is *not* available under the IDEA.

The questions presented are:

1. Whether, and in what circumstances, courts should excuse further exhaustion of the IDEA's administrative proceedings under Section 1415(*l*) when such proceedings would be futile.

2. Whether Section 1415(*l*) requires exhaustion of a non-IDEA claim seeking money damages that are not available under the IDEA.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

Perez v. Sturgis Public Schools, No. 20-1076, United States Court of Appeals for the Sixth Circuit, judgment entered June 25, 2021 (3 F.4th 236), rehearing denied July 29, 2021.

Perez v. Sturgis Public Schools, No. 1:18-cv-1134, United States District Court for the Western District of Michigan, judgment entered December 19, 2019 (2019 WL 6907138).

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PETITION FOR A WRIT OF CERTIORARI

Miguel Luna Perez ("Miguel") respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The decision of the court of appeals (App. 1a-35a) is published at 3 F.4th 236. The court's denial of rehearing en banc (App. 56a-57a) is not published. The opinion of the United States District Court of the Western District of Michigan granting Sturgis Public Schools' motion to dismiss (App. 43a-53a) is not published but available at 2019 WL 6907138. The court's related order granting Sturgis Public Schools Board of Education's motion to dismiss (App. 54a-55a) is not published.

JURISDICTION

The court of appeals entered judgment on June 25, 2021 (App. 1a-35a) and denied Miguel's timely petition for rehearing en banc on July 29, 2021 (App. 56a-57a). On October 14, 2021, Justice Kavanaugh extended the time to file a petition for a writ of certiorari through December 13, 2021. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reproduced in the petition appendix. App. 58a-72a.

INTRODUCTION

This case raises two frequently recurring questions of exceptional importance to children with disabilities who seek to vindicate their legal rights under the Constitution or federal anti-discrimination statutes apart from the Individuals with Disabilities Education Act (IDEA). The Sixth Circuit violated this Court's precedent and created a square circuit split on the first question presented, which is whether and when the IDEA exhaustion requirement applicable to such claims is subject to a futility exception. And this Court has already granted certiorari—but did not resolve—the second question presented, which is whether that exhaustion requirement applies to non-IDEA claims seeking remedies (namely, money damages) that are not available under the IDEA. Both questions warrant this Court's review.

The Americans with Disabilities Act (ADA) and the IDEA each protect children with disabilities. Accordingly, unlawful discrimination by public schools can give rise to claims under both statutes. Here, respondents Sturgis Public Schools and Sturgis Public Schools Board of Education (collectively, "Sturgis") violated petitioner Miguel Luna Perez's rights under both laws. Sturgis failed to provide Miguel with a qualified sign language interpreter for *twelve years*—rendering him unable to learn or communicate with others and making him an academic and social outcast.

Miguel pursued remedies under both statutes. As the IDEA requires, Miguel first sought relief in state IDEA administrative proceedings. After the hearing officer dismissed the ADA claim for lack of jurisdiction, the parties settled his IDEA claim in full.

Having received all the relief the IDEA proceeding could give him, Miguel then brought suit under the ADA to obtain a remedy the IDEA could not provide: money damages for his past harm.

The district court dismissed Miguel's ADA lawsuit, and the Sixth Circuit affirmed. The Sixth Circuit found Miguel's claim barred by 20 U.S.C. § 1415(*l*), which requires a plaintiff to exhaust non-IDEA claims "to the same extent as would be required" for IDEA claims, if the plaintiff "seek[s] relief [in the non-IDEA claim] that is also available under" the IDEA. The Sixth Circuit held that Miguel's ADA claim was subject to this exhaustion rule, and that he had not sufficiently exhausted that claim in the IDEA proceedings because he accepted a settlement before the administrative hearing.

That decision rested on two core errors—each of which fundamentally misinterprets Section 1415(*l*) and deprives disabled children of their rights under the ADA and other federal antidiscrimination laws.

First, the Sixth Circuit rejected Miguel's argument that Section 1415(*l*) does not require exhaustion of non-IDEA claims when exhaustion would be futile. This Court has held that the IDEA's exhaustion requirement has a futility exception. And eleven other circuits have recognized that this exception carries over to non-IDEA claims required to be exhausted under Section 1415(*l*). The Sixth Circuit is alone in holding otherwise.

The Sixth Circuit compounded its error by holding (in the alternative) that further exhaustion of the administrative proceedings would not have been futile. The court reached that conclusion even though the state hearing officer had already dismissed

Miguel's ADA claim for lack of jurisdiction, and even though Sturgis had already offered to provide Miguel with the full IDEA relief he could have obtained in the proceedings, in the form of a settlement.

This alternative ruling itself conflicts with precedent from the First, Third, Ninth, and Tenth Circuits—all of which have excused Section 1415(*l*) exhaustion on futility grounds when the plaintiffs settled their IDEA claims and the administrative proceedings thus had nothing left to offer them. The Sixth Circuit's rule also defies common sense. It essentially requires children with disabilities to turn down even full IDEA settlements—and forgo their ability to immediately receive an IDEA-mandated "free appropriate public education"—to preserve their distinct non-IDEA claims. There is no way that is what Congress intended.

Second, the Sixth Circuit erred in holding that the IDEA's exhaustion requirement applies to non-IDEA claims seeking compensatory damages—a remedy the IDEA cannot provide. As the United States has previously argued, that holding flatly contradicts the IDEA's text and purpose. By its terms, Section 1415(*l*) requires exhaustion only when the plaintiff's non-IDEA suit "seek[s] relief that *is also available* under [the IDEA]." 20 U.S.C. § 1415(*l*) (emphasis added). That condition is not satisfied when the plaintiff seeks money damages that are *not* available under the IDEA.

This Court granted certiorari to address this important question in *Fry v. Napoleon Community Schools*, 137 S. Ct. 743 (2017). But it ultimately left the question "for another day." *Id.* at 752 n.4. This case presents an ideal vehicle to put the issue to rest

and hold that non-IDEA claims seeking money damages need not be exhausted in IDEA proceedings.

This Court's review is urgently needed on both questions presented. If allowed to stand, the Sixth Circuit's decision will inflict great harm on students with disabilities and their families, by requiring them either to forfeit their non-IDEA rights (if they accept an IDEA settlement), or to give up the settlement and undergo lengthy and costly IDEA administrative proceedings even when the school district otherwise stands ready to remediate the IDEA violation. This Court should address the circuit split on the first question, resolve the question left open in *Fry*, and vindicate statutory protections for children with disabilities. The petition should be granted.

STATEMENT OF THE CASE

A. Legal Background

This case involves the interaction between two remedial schemes—the IDEA[1] and ADA, respectively—designed to protect children with disabilities.

1. The IDEA's core purpose is to "ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasizes special education and related services designed to meet their unique needs." 20 U.S.C. § 1400(d)(1)(A). The IDEA also sets forth procedures for resolving disputes between families and school officials when the family believes the child has been denied a FAPE. *See id.* § 1415; *Fry*, 137 S. Ct. at 749.

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[1] As originally enacted, the IDEA was called the Education of the Handicapped Act. For ease of reference, this petition refers to the law as the IDEA throughout.

First, the parent must file a "due process complaint" with the local or state educational agency. 20 U.S.C. § 1415(b)(6)-(7). The parties then have a "[p]reliminary meeting." *Id.* § 1415(f)(1)(B)(i). That meeting provides the educational agency with "the opportunity to resolve the complaint" at the outset by entering into a "[w]ritten settlement agreement." 20 U.S.C. § 1415(f)(1)(B)(i), (iii). Alternatively, the parties may pursue mediation. *Id.* § 1415(e)(1). The IDEA encourages the parties to resolve the dispute quickly: If a parent rejects a settlement offer that the agency presents ten days before a hearing, and then does not ultimately obtain relief more favorable than that offer, the parent cannot receive post-offer attorneys' fees. *Id.* § 1415(i)(3)(D)(i).

If such discussions fail, the parties proceed to the "due process hearing" before an administrative hearing officer. *Id.* § 1415(f)(1)(A). The hearing officer issues a decision "based on a determination of whether the child received a [FAPE]." *Id.* § 1415(f)(3)(E). Only then may the losing party file a civil action under the IDEA in state or federal district court to obtain review of that determination. *Id.* § 1415(i)(2)(A).[2]

Given these extensive statutory procedures, it is well understood that the IDEA imposes an exhaustion requirement: Parents may only bring IDEA claims in court if they have completed the administrative process first. At the same time, this Court has long recognized that exhaustion of the IDEA's administrative procedures is excused "if pursuing

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[2] If state law channels the parents to a local educational agency first, then the hearing officer's decision is first appealable to the state agency. 20 U.S.C. § 1415(g).

those remedies would be futile or inadequate." *Smith v. Robinson*, 468 U.S. 992, 1014 n.17 (1984); *see also Honig v. Doe*, 484 U.S. 305, 327-28 (1988) (explaining that "parents may bypass the administrative process where exhaustion would be futile or inadequate").

Courts hearing IDEA disputes may "grant such relief as the court determines is appropriate." 20 U.S.C. 1415(i)(2)(C)(iii). Such relief may include an injunction requiring the school district to provide special education and related services that will ensure a FAPE. Relief may also include financial compensation to cover expenses necessary to put the child in the position he would have been in absent the FAPE deprivation. *See School Comm. of Burlington v. Department of Educ.*, 471 U.S. 359, 369-70 (1985); *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 247 (2009). However, courts lack authority to award compensatory "damages"—such as damages for past emotional distress or lost income. *See Fry*, 137 S. Ct. at 754 n.8.

2. Congress has enacted other statutes, including the ADA and the Rehabilitation Act, that more generally protect individuals with disabilities. As relevant here, the ADA provides that qualified individuals with disabilities shall not "be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. It also authorizes individuals to bring suits for money damages to redress violations. *See Tennessee v. Lane*, 541 U.S. 509, 517 (2004).

Over the years, Congress and this Court have addressed the relationship between the IDEA's remedial scheme and the ADA, other federal discrimination statutes, and the Constitution. In

1984, this Court held in *Smith* that the IDEA provided the "exclusive avenue" for students with disabilities to bring claims regarding their education—thus barring claims under other sources of federal law. 468 U.S. at 1009.

In 1986, Congress enacted 20 U.S.C. § 1415(*l*) to reject *Smith*'s holding and restore students' rights to bring both IDEA claims and non-IDEA discrimination claims. That provision now states in relevant part:

> Nothing in [the IDEA] shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C. 12101 et seq.], title V of the Rehabilitation Act of 1973 [29 U.S.C. 790 et seq.], or other Federal laws protecting the rights of children with disabilities . . . .

20 U.S.C. § 1415(*l*); *see* Handicapped Children's Protection Act of 1986, Pub. L. No. 99-372, § 3, 100 Stat. 796, 797.

In the same provision, however, Congress also imposed an exhaustion requirement for certain non-IDEA claims, stating:

> [B]efore the filing of a civil action under such laws seeking relief that is also available under [the IDEA], the procedures under subsections (f) and (g) [of Section 1415] shall be exhausted to the same extent as would be required had the action been brought under [the IDEA].

20 U.S.C. § 1415(*l*). The committee reports accompanying Section 1415(*l*) make clear that this new exhaustion requirement for *non*-IDEA claims is subject to futility and inadequacy exceptions, just like the exhaustion requirement applicable to IDEA claims. *See* H.R. Rep. No. 99-296, at 7 (1985); S. Rep. No. 99-112 at 15 (1985).

This Court considered Section 1415(*l*) in *Fry*. There, the petitioners did not exhaust the IDEA's administrative procedures because they were seeking monetary damages under the ADA and the Rehabilitation Act; they argued that exhaustion was not required because they were not "seeking relief that is also available under [the IDEA]." 20 U.S.C. § 1415(*l*); *see* Cert. Pet. i, *Fry v. Napoleon Cmty. Schs.*, 137 S. Ct. 743 (2007) (No. 15-497). The United States filed cert-stage and merits briefs supporting the petitioners, arguing that under Section 1415(*l*)'s plain language, IDEA exhaustion is not required for ADA and Rehabilitation Act actions seeking remedies the IDEA cannot provide. *See Fry* U.S. Br. 16.

Fry ultimately did not decide that question, however. Instead, the Court held that "exhaustion is not necessary when the gravamen of the plaintiff's [non-IDEA] suit is something other than the denial of . . . a 'free appropriate public education,'" and the Court remanded for further proceedings on that issue. *Fry*, 137 S. Ct. at 748, 758-59 (quoting 20 U.S.C. § 1412(a)(1)(A)).

B. Factual And Procedural Background

1. Miguel Luna Perez is a deaf individual who resides in the Sturgis Public School District ("Sturgis"). App. 1a. He attended schools in that district from age 9 through age 20. *Id.* at 1a, 6a.

Sturgis recognized that Miguel required sign language for communication. *Id.* at 1a. But Sturgis assigned Miguel an unqualified classroom aide who was not trained to work with deaf students and did not know sign language, and it misled Miguel and his parents about the aide's qualifications. *Id.* at 1a-2a, 18a. And in later years of Miguel's education, the aide would abandon him for hours a day—so he had no way to communicate with anyone. *Id.* at 18a.

During the same period, Sturgis also awarded Miguel grades that did not in any way reflect his mastery of the curriculum. *Id.* at 5a-6a. Based on Sturgis's misrepresentations, Miguel and his parents believed he would earn a high school diploma after twelfth grade, but months before graduation, they were informed that Miguel qualified only for a "certificate of completion." *Id.* at 2a, 6a.

2. On December 27, 2017, Miguel filed a due process complaint with the Michigan Department of Education alleging Sturgis's violations of the IDEA, ADA, Rehabilitation Act, and two Michigan laws (one an analogue of the IDEA, the other an analogue of the ADA). *Id.* at 2a; ECF 10 at 11.[3] On May 18, 2018, the hearing officer held a prehearing conference in which she dismissed the ADA, Rehabilitation Act, and Michigan ADA-analogue claims as "outside the jurisdiction of this Tribunal." App. 2a; *id.* at 36a-38a.

In advance of the hearing, Sturgis served Miguel with a "ten-day settlement offer," as the IDEA contemplates. ECF 12-2 at 12; *see also* 20 U.S.C. § 1415(i)(3)(D). On June 14, 2018, the parties met at the required preliminary meeting. ECF 12-2 at 12;

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[3] "ECF [#]" refers to documents in docket No. 1:18-cv-01134 (W.D. Mich.).

see also 20 U.S.C. § 1415(f)(1)(B)(i). The next day, they agreed to settle the IDEA claim. App. 2a; ECF 12-2 at 12.

Under the settlement, Miguel obtained the full relief he sought for his IDEA claim. Sturgis agreed to Miguel's placement at the Michigan School for the Deaf, it agreed to pay for post-secondary compensatory education and sign language instruction for Miguel and his family, and it paid the family's attorneys' fees. App. 2a. The settlement agreement did not release Miguel's ADA and Rehabilitation Act claims. *See id.* at 2a. After the parties informed the hearing officer of their settlement, she dismissed the case with prejudice. *Id.*

3. On October 2, 2018, Miguel filed a complaint against Sturgis in federal district court. *Id.*; ECF 1. He alleged violations of the ADA and its Michigan-law analogue. App. 2a; ECF 10 at 3. And he sought a declaration that those laws were violated as well as compensatory damages. *Id.*

Sturgis moved to dismiss, asserting that Miguel failed to exhaust administrative procedures as required by Section 1415(*l*). App. 3a. Sturgis contended that, to bring his ADA claim, Miguel was required to reject the IDEA settlement and instead go through with the scheduled due process hearing. *See id.* In response, Miguel argued that (1) exhaustion would have been futile because he had obtained all relief available in the IDEA proceedings via the parties' settlement, (2) his ADA claim had been dismissed from the administrative proceedings, and (3) his ADA claim sought damages unavailable under the IDEA. *See id.* at 42a-45a.

The district court agreed with Sturgis, dismissed Miguel's ADA claim, and declined to exercise supplemental jurisdiction over the Michigan-law claim. *Id.* at 45a-52a, 54a-55a.

4. A panel of the Sixth Circuit affirmed, with Judge Stranch dissenting. App. 1a-35a.

a. The majority first concluded that Section 1415(*l*)'s exhaustion requirement applied to Miguel's ADA claim. *Id.* at 5a-8a. The majority recognized that this claim seeks compensatory damages—"a specific remedy that is unavailable under the IDEA." *Id.* at 7a. But the majority found that Miguel nonetheless "'seek[s] relief that is also available under [the IDEA],'" insofar as "the crux of Perez's [ADA] complaint is that he was denied an adequate education." *Id.* at 5a-7a (quoting 20 U.S.C. § 1415(*l*)). Because the IDEA provides relief for that injury, the majority reasoned, Section 1415(*l*) applies—"even though Perez wants a remedy he cannot get" under that statute. *Id.* at 7a-8a. And the majority concluded that Miguel did not exhaust because the hearing officer "never determined whether Perez received an appropriate education under the IDEA," due to the parties' settlement. *Id.* at 9a.

The Sixth Circuit next rejected Miguel's argument that Section 1415(*l*) is subject to an exception when proceeding with the IDEA administrative process would be futile. *Id.* at 10a-14a. The majority observed that Section 1415(*l*)'s text "does not come with a futility exception." *Id.* at 10a. Invoking this Court's 2016 decision in *Ross v. Blake*, 578 U.S. 632 (2016), regarding the Prison Litigation Reform Act (PLRA), the Sixth Circuit reasoned that "[a]ny futility exception" recognized in prior decisions "cannot survive *Ross*, which prohibits judge-made exceptions

to statutory exhaustion requirements." App. 10a-12a & n.*.

In the alternative, the Sixth Circuit held that even if a futility exception existed, Miguel would not be entitled to it. *Id.* at 11a-14a. The majority reasoned that "when an available administrative process could have provided relief" for Miguel's IDEA claim, further exhaustion is "not futile" just because he "decide[d] not to take advantage of" that process and settled instead. *Id.* at 13a. In other words, the majority believed Miguel should have rejected the favorable IDEA settlement and litigated his IDEA claim through hearing and decision, to preserve his right to later bring a separate ADA damages claim.

b. Judge Stranch dissented. *Id.* at 15a-35a. As relevant here, Judge Stranch emphasized that "Supreme Court precedent compels the conclusion" that Section 1415(*l*) contains a futility exception, citing *Honig*. *Id.* at 24a; *see also id.* at 28a-29a. She noted that "every single one of our sister circuits" has recognized such an exception based on that controlling precedent. *Id.* at 29a-30a. And she argued that the majority had misread *Ross*. *Id.* at 30a-35a.

Judge Stranch also concluded that Miguel's circumstances established futility. *Id.* at 24a, 26a-28a. She criticized the majority for breaking with "[a] number of our sister circuits . . . in cases involving similar facts." *Id.* at 26a-27a (collecting cases). Those circuits "recognize [that] requiring litigants like [Miguel] to 'exhaust'—in other words, to reject an acceptable IDEA settlement offer—forces students to choose between immediately obtaining the FAPE to which they are entitled, or forgoing that education so they can enforce their ADA right of equal access to

institutions." *Id.* at 27a. That is "exactly the opposite of what Congress intended." *Id.*

5. Miguel filed a petition for rehearing en banc, which the Sixth Circuit denied, with Judge Stranch noting that she would grant the petition. *Id.* at 56a.

REASONS FOR GRANTING THE WRIT

I. REVIEW IS WARRANTED TO ADDRESS SECTION 1415(*l*)'S FUTILITY EXCEPTION

A. The Sixth Circuit's Decision Creates Two Circuit Splits

Below, the Sixth Circuit issued two holdings on futility: (1) that Section 1415(*l*) contains no futility exception at all, and (2) that even if a futility exception existed, Miguel's circumstances would not qualify. Both holdings create square circuit splits warranting this Court's attention.

1. The Sixth Circuit's Holding That Section 1415(*l*) Has No Futility Exception Splits With Eleven Other Circuits

In holding that Section 1415(*l*) does not contain any kind of a futility exception, the Sixth Circuit created a sharp circuit split. Every other federal court of appeals—except for the Federal Circuit, which does not hear IDEA cases—has recognized Section 1415(*l*)'s exhaustion requirement is excused when exhaustion would be futile. *See Doucette v. Georgetown Pub. Schs.*, 936 F.3d 16, 22, 31 & n.21 (1st Cir. 2019); *B.C. v. Mount Vernon Sch. Dist.*, 837 F.3d 152, 157 & n.3 (2d Cir. 2016); *W.B. v. Matula*, 67 F.3d 484, 496 (3d Cir. 1995), *abrogated on other grounds by A.W. v. Jersey City Pub. Schs.*, 486 F.3d 791, 799 (3d Cir. 2007) (en banc); *MM ex rel. DM v. School Dist. of*

Greenville Cnty., 303 F.3d 523, 536 (4th Cir. 2002); *Heston v. Austin Indep. Sch. Dist.*, 816 F. App'x 977, 983 (5th Cir. 2020) (per curiam); *C.T. ex rel. Trevorrow v. Necedah Area Sch. Dist.*, 39 F. App'x 420, 422 (7th Cir. 2002); *J.M. v. Francis Howell Sch. Dist.*, 850 F.3d 944, 950 (8th Cir. 2017); *Porter v. Board of Trs. of Manhattan Beach Unified Sch. Dist.*, 307 F.3d 1064, 1069-70 (9th Cir. 2002), *cert. denied*, 537 U.S. 1194 (2003); *Muskrat v. Deer Creek Pub. Schs.*, 715 F.3d 775, 786 (10th Cir. 2013); *N.B. by D.G. v. Alachua Cnty. Sch. Bd.*, 84 F.3d 1376, 1379 (11th Cir. 1996); *Cox v. Jenkins*, 878 F.2d 414, 418-19 (D.C. Cir. 1989).

Those circuits have relied on this Court's recognition of a futility exception to the IDEA's exhaustion requirement in *Honig v. Doe*, which noted that "parents may bypass the administrative process where exhaustion would be futile or inadequate." 484 U.S. 305, 327 (1988) (citing *Smith v. Robinson*, 468 U.S. 992, 1014 n.17 (1984)); *see, e.g.*, *M.T.V. v. DeKalb Cnty. Sch. Dist.*, 446 F.3d 1153, 1159 (11th Cir. 2006); *Heston*, 816 F. App'x at 983; *C.T.*, 39 F. App'x at 422.

They have also pointed to unusually clear-cut legislative history explicitly recognizing a futility exception to the IDEA in general and to Section 1415(*l*) in particular. *See, e.g.*, *Doucette*, 936 F.3d at 31 (noting that "[t]he legislative history of the IDEA shows a special concern with futility"); *Hoeft v. Tucson Unified Sch. Dist.*, 967 F.2d 1298, 1303-04 & n.4 (9th Cir. 1992); *W.B.*, 67 F.3d at 496; *see also infra* at 22.

Below, the Sixth Circuit reasoned that Section 1415(*l*)'s lack of a futility exception follows from this Court's interpretation of the PLRA in *Ross*. App. 10a, 12 n.*. But eight other circuits have recognized or

reaffirmed a futility exception in cases after *Ross*. *See Doucette*, 936 F.3d at 31 (1st Cir.); *B.C.*, 837 F.3d at 157 n.3 (2d Cir.); *Wellman v. Butler Area Sch. Dist.*, 877 F.3d 125, 129-30 & n.6 (3d Cir. 2017); *Z.G. ex rel. C.G. v. Pamlico Cnty. Pub. Schs. Bd. of Educ.*, 744 F. App'x 769, 777 (4th Cir. 2018); *Heston*, 816 F. App'x at 983 (5th Cir.); *J.M.*, 850 F.3d at 950 (8th Cir.); *Student A ex rel. Parent A v. San Francisco Unified Sch. Dist.*, 9 F.4th 1079, 1083 (9th Cir. 2021); *Durbrow v. Cobb Cnty. Sch. Dist.*, 887 F.3d 1182, 1191 (11th Cir. 2018). And in *Doucette*, the First Circuit dismissed the argument that PLRA precedent governs the interpretation of Section 1415(*l*), noting that *Fry* "rejected" a comparison between the two statutes by "highlighting the differences in language between the two [exhaustion] standards and explaining that the IDEA's exhaustion standard is more forgiving." 936 F.3d at 23 n.10.

In addition to virtually every court of appeals, the United States has recognized (in a brief post-dating *Ross*) that Section 1415(*l*) contains "the standard administrative law exceptions" to exhaustion for futility and inadequacy. *See Fry* U.S. Br. 12, 21-23 (relying on *Honig*). Even the respondent school district in *Fry* readily conceded the existence of a futility exception. *Fry* Oral Argument Tr. at 45:21-24, 50:18-19, 55:6-8.

This lopsided circuit split will not disappear on its own. The Sixth Circuit adopted its outlier position—and denied rehearing en banc—fully aware of case law from every other circuit going the other way and in the face of a forceful dissent. *See* App. 29a-30a, 35a. And it did so based on a conviction that this Court's decision in *Ross* controlled the outcome. *Id.*

at 10a, 12a n.*. Only this Court's intervention can eliminate the divide.

2. The Sixth Circuit's Alternative Holding That An IDEA Settlement Does Not Establish Futility Conflicts With Four Circuits

The Sixth Circuit's alternative holding—that Miguel's circumstances do not establish futility even if such an exception existed—also creates a circuit split. The majority held that when a student "settle[s] his [IDEA] claim before allowing the process to run its course," he cannot demonstrate the futility of further administrative proceedings in bringing a later non-IDEA claim. App. 13a. The court reasoned that because it would not have been "futile" for Miguel to reject settlement and continue to pursue *the IDEA claim*, it followed that Miguel could not show futility for his ADA claim, either. *See id.* (explaining that "an available administrative process could have provided relief for his denial of a FAPE," but Miguel simply "decide[d] not to take advantage of it").

In contrast, the First, Third, Ninth, and Tenth Circuits have all found that a student's non-IDEA damages action could go forward where the student has obtained IDEA relief via settlement, because further exhausting the IDEA administrative process would be futile. The outcomes in those cases—as well as the courts' reasoning—clearly diverges from the decision below.

In *Doucette*, the First Circuit held that Section 1415(*l*) did not bar a student's damages action under Section 1983 when the family settled its IDEA claim with the school before the point of a hearing. 936 F.3d at 30-31. The court explained that "the Doucettes

engaged in the administrative process until they received the relief that they sought (and the only relief available to them through the IDEA's administrative process)." *Id.* "Having achieved success through their interactions with local school officials," the First Circuit concluded, "there was no need for the Doucettes to seek a hearing." *Id.* Accordingly, the First Circuit ruled that "enforcing the exhaustion requirement is unnecessary here because the circumstances establish the futility of such additional proceedings." *Id.* at 31; *see also id.* at 31-33.

Likewise, in *Muskrat*, the Tenth Circuit considered a case in which parents had not "formally request[ed] a due process hearing." 715 F.3d at 786. The Tenth Circuit held that Section 1415(*l*) nonetheless did not bar the parents' claim for damages under Section 1983, because they had "worked through administrative channels to obtain the [IDEA] relief they sought." *Id.* Thus, "given . . . the relief they obtained, it would have been futile" to "force them to request a formal due process hearing . . . simply to preserve their damages claim." *Id.* In a subsequent decision authored by then-Judge Gorsuch, the Tenth Circuit reaffirmed "that IDEA's administrative exhaustion requirement is subject to a traditional futility exception." *A.F. ex rel. Christine B. v. Española Pub. Schs.*, 801 F.3d 1245, 1249 (10th Cir. 2015) (citing *Muskrat*, 715 F.3d at 786, and *Honig*, 484 U.S. at 327).

The Third Circuit also found futility on similar facts in *W.B.* There, the parent had "entered into a settlement stipulating [to the relief the student] had sought" and providing for attorneys' fees. 67 F.3d at 490. The parent then sued for damages under Section

1983. In finding that exhaustion post-settlement would have been "futile," the court noted that "the relief sought by plaintiffs in this action was unavailable in IDEA administrative proceedings" and that it was doubtful "the administrative tribunal would even be competent to hear plaintiff's IDEA claim since any rights that can be had have already been settled." *Id.* at 496.

Finally, the Ninth Circuit in *Witte v. Clark County School District* held that Section 1415(*l*) did not bar a damages action where the plaintiff had "used administrative procedures to secure the remedies that are available under the IDEA." 197 F.3d 1271, 1276 (9th Cir. 1999), *overruled on other grounds by Payne v. Peninsula Sch. Dist.*, 653 F.3d 863 (9th Cir. 2011) (en banc), *cert. denied*, 565 U.S. 1196 (2012). The court held that "exhaustion of administrative remedies is not required" where a student "seeks only monetary damages" and "all educational issues already have been resolved to the parties' mutual satisfaction." *Id.* at 1275.[4]

Had Miguel filed his ADA action in one of those four circuits, he almost certainly would have been entitled to a futility exception. *Cf. D.D. v. Los Angeles Unified Sch. Dist.*, --- F.4th ----, 2021 WL 5407763, at

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[4] Although the *Witte* court did not couch its reasoning in terms of futility per se, its analysis tracked the futility exception already recognized in that circuit. *See Witte*, 197 F.3d at 1275; *Hoeft*, 967 F.2d at 1303. And the Ninth Circuit has since cited *Witte* for the proposition that exhaustion may be "futile where all the educational issues are resolved, leaving only issues for which there is no adequate administrative remedy." *Porter*, 307 F.3d at 1074; *see also D.D. v. Los Angeles Unified Sch. Dist.*, --- F.4th ----, 2021 WL 5407763, at *10 n.7 (9th Cir. Nov. 19, 2021) (en banc) (explaining that *Witte* relied on "a species of futility").

*11 (9th Cir. Nov. 19, 2021) (en banc) (pointing to *Doucette*, *Muskrat*, and *W.B.* as cases deeming "further exhaustion futile" based on IDEA settlements); *id.* at *21 (Berzon, J., dissenting) (similar). The result should not be different simply because his case was filed in the Sixth Circuit.

B. Both Of The Sixth Circuit's Holdings Are Wrong

1. Section 1415(*l*) Has A Futility Exception

The Court should also grant review because the Sixth Circuit got it wrong. The Court has already held—correctly—that IDEA exhaustion is not required where it "would be futile or inadequate." *Honig*, 484 U.S. at 327.

a. It is well established that "'Congress legislates against the backdrop' of certain unexpressed presumptions." *Bond v. United States*, 572 U.S. 844, 857 (2014) (quoting *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991)). And this Court has time and again recognized that the "[d]octrine[] of . . . 'exhaustion' contain[s] exceptions," including "when exhaustion would prove 'futile.'" *Shalala v. Illinois Council on Long Term Care, Inc.*, 529 U.S. 1, 13 (2000) (citing *McCarthy v. Madigan*, 503 U.S. 140, 147-48 (1992); *McKart v. United States*, 395 U.S. 185, 197-201 (1969)); *Montana Nat'l Bank of Billings v. Yellowstone Cnty.*, 276 U.S. 499, 505 (1928).

Smith noted the widespread view that the IDEA's exhaustion requirement contained a futility exception. 468 U.S. at 1014 n.17. And two years later, Congress enacted Section 1415(*l*) to require "exhaust[ion]" of non-IDEA claims "*to the same extent* as would be required had the action been brought

under" the IDEA. 20 U.S.C. § 1415(*l*) (emphasis added). Congress thereby incorporated the same well-established futility exception for exhaustion of IDEA claims, to its new exhaustion requirement applicable to non-IDEA claims. *See Fry* U.S. Br. 21-22. This Court reaffirmed the IDEA's futility exception two years after that, in *Honig*: It recognized that "parents may bypass the administrative process where exhaustion would be futile or inadequate." 484 U.S. at 327.

Since *Honig*, Congress has amended the IDEA numerous times without eliminating this recognized futility exception.[5] This Court has held in the IDEA context that "Congress is presumed to be aware of [a] . . . judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 239-40 (2009) (citation omitted). The courts of appeals' unanimous position that Section 1415(*l*) contains this exception—disrupted only recently by the decision below—further indicates that Congress was aware of and ratified that interpretation. *Cf. Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 536 (2015)

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[5] *See, e.g.*, Individuals With Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, 118 Stat. 2647; Education Flexibility Partnership Act of 1999, Pub. L. No. 106-25, 113 Stat. 41; Individuals With Disabilities Education Act Amendments for 1997, Pub. L. No. 105-17, 111 Stat. 37; Improving America's Schools Act of 1994, Pub. L. No. 103-382, 108 Stat 3518; Individuals with Disabilities Education Act Amendments of 1991, Pub. L. No. 102-119, 105 Stat. 587; Education of the Handicapped Act Amendments of 1990, Pub. L. No. 101-476, 104 Stat. 1103; Handicapped Programs Technical Amendments Act of 1988, Pub. L. No. 100-630, 102 Stat. 3289.

("Congress' decision . . . to amend [a law] while still adhering to the operative language in [the provision at issue] is convincing support for the conclusion that Congress accepted and ratified the unanimous holdings of the Courts of Appeals" interpreting that provision).

b. The legislative history of the IDEA confirms Congress's intent to excuse exhaustion in certain circumstances. In 1975, the principal sponsor of the original IDEA explained that "exhaustion . . . should not be required . . . in cases where such exhaustion would be futile either as a legal or practical matter." 121 Cong. Rec. 37,413 (1975) (remarks of Sen. Williams), *cited in Honig*, 484 U.S. at 327.

Congress likewise recognized the futility and inadequacy exceptions when enacting Section 1415(*l*) a decade later. The House committee report noted "it is not appropriate to require the use of" the IDEA's procedures where "it would be futile to use the due process procedures," or where "it is improbable that adequate relief can be obtained" because "the hearing officer lacks the authority to grant the relief sought." H.R. Rep. No. 99-296, at 7 (1985). The Senate committee report likewise explained that "[e]xhaustion of [IDEA] administrative remedies would . . . be excused where they would not be required to be exhausted under the [IDEA], such as when resort to those proceedings would be futile." S. Rep. No. 99-112, at 15 (1985).

Indeed, Justice Breyer picked up on this background at the *Fry* oral argument, when he noted that Congress enacted Section 1415(*l*) against the "well-known" background principle—recognized "for a hundred years or more"—that there is an

"exception . . . where exhaustion would be futile." *Fry* Oral Argument Tr. at 21:18-23:5.

c. The Sixth Circuit dismissed *Honig*'s recognition of a futility exception as "dictum." App. 11a. It also stated that "[a]ny futility exception to section 1415(*l*) . . . cannot survive *Ross*." *Id.* at 12a n.*; *see also id.* at 10a. Both points are misplaced.

Honig's treatment of the futility exception was not dicta. *Honig* held that schools are generally required to adhere to the IDEA's "stay-put provision," which prohibits schools from unilaterally changing a student's placement while administrative proceedings are ongoing. 484 U.S. at 323. In reaching that holding, the Court relied on the existence of the futility and inadequacy exceptions—which it noted are available to schools as well as parents—to conclude that schools would not necessarily have to fully exhaust the IDEA's procedures before turning to a court for relief in dealing with a dangerous student. *See id.* at 326-28. As Judge Stranch explained below, "[t]hat reasoning was essential to the judgment because it explained why the Court's interpretation of the [IDEA stay-put provision] would not lead to absurd results." App. 29a.

The Sixth Circuit also misread *Ross*'s PLRA-specific analysis. *Ross* rejected a "special circumstances" doctrine that would have excused exhaustion when the prisoner "'reasonably' . . . 'believed that he had sufficiently exhausted his remedies.'" 578 U.S. at 637 (citation omitted). The Court reasoned that—among other problems with this broad exception—adopting it would unequivocally contravene congressional intent. *Id.* at 640-42. The "precursor" to the PLRA had "made exhaustion 'in large part discretionary,'" and

Congress enacted the PLRA to do away with that approach. *Id.* at 640-41 (citations omitted). If the Court were to recognize the special circumstances doctrine, it would "resurrect" the exact kind of discretionary exhaustion scheme Congress had sought to discard. *Id.* at 641.

Crucially, *Ross* took care to clarify that it was not stating a general rule about exhaustion provisions other than the PLRA. "[A]n exhaustion provision with a different text and history . . . might be best read to give judges the leeway to create exceptions or to itself incorporate standard administrative-law exceptions." *Id.* at 642 n.2; *see also id.* at 649-50 (Breyer, J., concurring in part) (explaining that statutory exhaustion requirements remain subject to "administrative law's 'well-established exceptions'" (citation omitted)).

Unlike the PLRA, the IDEA's history firmly supports a futility exception to Section 1415(*l*). After all, Congress enacted that provision to *reaffirm* that other regimes like the ADA remain fully available to students with disabilities, *see Fry*, 137 S. Ct. at 750, and the provision's legislative history indicates that Congress fully intended to incorporate a futility exception, *see supra* at 22-23. Moreover, *Fry* characterized the PLRA as "a stricter exhaustion statute." 137 S. Ct. at 755. Section 1415(*l*)'s "different text and history" is "best read to . . . incorporate standard administrative-law exceptions." *Ross*, 578 U.S. at 642 n.2.

Honig cannot be so lightly disregarded by a lower court. *See Bosse v. Oklahoma*, 137 S. Ct. 1, 2 (2016) (per curiam) ("Our decisions remain binding precedent until we see fit to reconsider them . . . . (citation omitted)). The Sixth Circuit was wrong to

unilaterally deem that case a dead letter based on its broad reading of a different decision concerning a different statute.

2. Further Exhaustion Would Have Been Futile In The Circumstances Presented Here

In this case, Miguel followed the IDEA process by bringing his ADA claim in the state administrative proceedings (where it was dismissed) and settling his IDEA claim pursuant to Section 1415's resolution procedures. Contrary to the Sixth Circuit's analysis, any further exhaustion of the administrative proceedings would have been futile.

a. Further exhaustion of the IDEA process after the parties' settlement would have been futile for two reasons: (1) the hearing officer had already ruled that she lacked jurisdiction to adjudicate Miguel's ADA claim in that hearing; and (2) the settlement gave Miguel and his family full relief for Sturgis's IDEA violations. In these circumstances, there was nothing else the hearing could provide.

The Sixth Circuit nonetheless reasoned that Miguel was obligated to refuse Sturgis's offer of immediate relief and continue litigating his IDEA claim to a decision, to preserve his ADA claim. But Miguel stood to gain absolutely nothing by rejecting the IDEA relief he sought and forging ahead to a hearing incapable of giving him more than what Sturgis was already offering. *See Futile*, *Webster's Third New International Dictionary* 925 (1986) ("serving no useful purpose"); *New Oxford American Dictionary* 707 (3d ed. 2010) ("incapable of producing any useful result; pointless").

"Surely" Miguel and his family did not "ha[ve] to pursue a further administrative hearing to get what they had already obtained." *Doucette*, 936 F.3d at 30 n.20. Indeed, turning down the proffered settlement and continuing the administrative proceedings would at a minimum have delayed Miguel's receipt of a FAPE, and could even have resulted in severe financial and educational loss if the hearing officer had somehow ruled for the district.

The United States has previously recognized that the situation here—where the plaintiff has "already reached a resolution with the school providing [him] with whatever IDEA relief [he] may be entitled to receive"—is a textbook example of when Section 1415(*l*)'s exhaustion requirement does not apply. *Fry* U.S. Br. 33. Such a plaintiff "should not be forced to exhaust a potentially burdensome, adversarial administrative process as a prerequisite to filing an inevitable civil action in court." *Id.*

b. The Sixth Circuit majority reasoned that by "giv[ing] up his IDEA claim," Miguel "also g[ave] up his right to" seek ADA relief. App. 4a. But Miguel did not "give up" his IDEA claim: He obtained all the relief that claim could provide, by following the prehearing settlement provisions set forth in the IDEA itself. *See supra* at 10-11. And as Sturgis was well aware, Miguel did not release his ADA claim in the settlement agreement.[6]

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[6] The Sixth Circuit was therefore wrong to compare this case to *Sango v. LeClaire*, where a prisoner "abandon[ed] the [administrative] process before completion" and then argued futility "because his grievance is now time-barred." App. 13a (second alteration in original) (quoting No. 16-2221, 2017 WL

The Sixth Circuit also speculated that the hearing officer might have created a record that might have "aided" Miguel's later ADA action. App. 13a-14a. But the purpose of the hearing—especially once the officer deliberately narrowed its scope by dismissing the non-IDEA claims—was to adjudicate the parties' dispute under the IDEA's standards. The record would not have addressed whether the ADA was violated. ADA claims differ significantly from IDEA claims, in that the ADA has an intent requirement and allows defenses inapplicable in the IDEA context. *See, e.g.*, *Barnes v. Gorman*, 536 U.S. 181, 186-87 (2002) (ADA plaintiffs generally must show "intentional conduct" by defendant). Moreover, whereas Congress required district courts hearing IDEA cases to give "due weight" to factual findings in the IDEA administrative record, *see Board of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 206 (1982); 20 U.S.C. § 1415(i)(2)(C), Congress made no similar provision for non-IDEA cases.

There is no dispute that Miguel fulfilled the IDEA's administrative process insofar as (1) he pursued an ADA claim in that process (until that claim was dismissed), and (2) he engaged in the IDEA's settlement procedures and accepted Sturgis's ten-day offer after the parties' prehearing conference.

3912618, at *2 (6th Cir. May 23, 2017)). Here, Miguel did everything the IDEA wanted him to do—filed a due process complaint and reached a mutually acceptable agreement with his district, which enabled him to receive a FAPE—before he brought a separate ADA suit.

That was enough: Any further exhaustion would have been futile and unnecessary.[7]

C. The Sixth Circuit's Rule Upends Congress's Intent And Will Hurt Children With Disabilities

As Miguel's case illustrates, the Sixth Circuit's rule will adversely impact the ability of students with disabilities to timely and effectively vindicate their federal rights.

Judge Stranch correctly observed that the Sixth Circuit's rule will force students with meritorious claims under both the IDEA and the ADA "to choose between immediately obtaining the FAPE to which they are entitled, or forgoing that education so they can enforce their ADA right of equal access to institutions." App. 27a. This is "the opposite" of what Congress wanted in enacting Section 1415(*l*). *Id.*

As *Fry* emphasized, Section 1415(*l*) "'reaffirm[s] the viability' of federal statutes like the ADA or Rehabilitation Act 'as separate vehicles,' no less

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[7] Several judges have correctly recognized this sort of exhaustion is sufficient to satisfy Section 1415(*l*) even apart from any futility exception. *See D.D.*, 2021 WL 5407763, at *21 (Berzon, J., dissenting, joined by Thomas, CJ., and Paez, J.) (arguing that "[t]he exhaustion provision should be read to encompass a settlement reached through the IDEA's prescribed procedures"); *A.F.*, 801 F.3d at 1255-57 (Briscoe, CJ., dissenting) (Section 1415(*l*) "merely requir[es] a claimant to make full use of the procedures outlined in §§ 1415(f) and (g) to attempt to resolve her IDEA claim," so exhaustion is satisfied when a plaintiff resolves a claim through those "mediation or preliminary meeting" procedures); *cf. Witte*, 197 F.3d at 1275-76 (reasoning, in finding that no exhaustion was necessary, that the plaintiff "in fact has used administrative procedures to secure the remedies that are available under the IDEA").

integral than the IDEA, 'for ensuring the rights of handicapped children.'" 137 S. Ct. at 750 (alteration in original) (quoting H.R. Rep. No. 99-296 at 4). The Sixth Circuit's rule forces the child and his family to choose between these different statutory schemes—at least if they want educational relief in a timely manner.

Section 1415(*l*) was obviously not intended to pressure children with disabilities to give up their non-IDEA claims in order to obtain IDEA relief. Nor was the provision intended to discourage those children from reaching favorable settlements with their schools. On the contrary, the IDEA affirmatively *encourages* parties to settle their claims before the case gets to a full-blown hearing. *See supra* at 6 (discussing IDEA settlement procedures); 20 U.S.C. § 1400(c)(8) (congressional finding that "[p]arents and schools should be given expanded opportunities to resolve their disagreements in positive and constructive ways").

The Sixth Circuit's rule would severely undermine the IDEA's pro-settlement structure. Most relevant here, the Sixth Circuit's rule undercuts the ten-day offer provision. When a district timely makes a settlement offer and the family rejects it, any post-offer fees and costs incurred by the parent are generally not recoverable if "the relief finally obtained . . . is not more favorable . . . than the offer." 20 U.S.C. § 1415(i)(3)(D)(i). Thus, in cases like Miguel's where a school district readily offers the IDEA relief a student seeks, Congress clearly wanted students to accept the deal and bring the proceedings to an end.

Conversely, rejecting such an offer—as the Sixth Circuit's decision would require Miguel to do—likely

means incurring substantial fees and costs in addition to forgoing the immediate possibility of a FAPE. Congress did not create a framework under which students may preserve their non-IDEA rights only at this steep price.

The Sixth Circuit's regime is especially unfortunate given that "administrative and judicial review under the [IDEA] is often 'ponderous.'" *Honig*, 484 U.S. at 322 (citation omitted); *see* Perry A. Zirkel, *Post*-Fry *Exhaustion Under the IDEA*, 381 Ed. L. Rep. 1, 4 n.21 (2020, Westlaw) (explaining that most IDEA proceedings last far longer than the statutory timeline). That is crucial lost time where the student could otherwise benefit from a FAPE negotiated through a cooperative settlement.

The Sixth Circuit's exhaustion rule requires additional drawn-out adversarial proceedings, with *no* meaningful benefit to children with disabilities or their schools—and indeed, a very real potential for harm. This Court should resolve the circuit split and overturn the Sixth Circuit's misguided interpretation of Section 1415(*l*).

II. THE COURT SHOULD ALSO RESOLVE THE QUESTION IT GRANTED CERTIORARI TO ADDRESS IN *FRY*

The Court should also grant certiorari to decide the question it planned to address in *Fry*: whether "exhaustion [is] required when the plaintiff complains of the denial of a FAPE, but the specific remedy she requests—here, money damages for emotional distress—is not one that an IDEA hearing officer may award." 137 S. Ct. at 752 n.4. *Fry* shows this second question presented is independently certworthy. It is also logically antecedent to the first question

presented, and should be granted alongside that question to ensure that the Court is able to resolve all significant outstanding issues regarding the application of Section 1415(*l*). If Miguel prevails on either question, the decision below must be reversed.

1. As the United States explained in *Fry*, Section 1415(*l*)'s plain text does not require exhaustion when the child seeks only remedies the IDEA cannot provide. *Fry* U.S. Br. 16. Section 1415(*l*)'s exhaustion requirement applies to non-IDEA "civil action[s] . . . seeking relief that is also available under [the IDEA]." 20 U.S.C. § 1415(*l*). Thus, exhaustion is not required when the civil action seeks relief is not "available" under the IDEA's remedial scheme. Because compensatory damages cannot be obtained under the IDEA, *see supra* at 7, a plaintiff who seeks such damages under a non-IDEA statute is not required to exhaust that claim.

That conclusion follows from the plain meaning of "available." *See Fry*, 137 S. Ct. at 753 ("available" means relief that is "accessible or may be obtained" (citation omitted)); *Ross*, 578 U.S. at 642 ("available" means "capable of use for the accomplishment of a purpose," and that which "is accessible or may be obtained" (citing dictionary)). It also tracks the "ordinary meaning" of the word "relief," which is a synonym for "remedy." *McMillen v. New Caney Indep. Sch. Dist.*, 939 F.3d 640, 648 (5th Cir. 2019) (citing dictionary), *cert. denied*, 140 S. Ct. 2803 (2020). Indeed, Section 1415 elsewhere unequivocally uses "relief" in the sense of "remedy." *See* 20 U.S.C. § 1415(i)(2)(C)(iii). In addition, Section 1415(*l*) directs courts to look at the relief that the plaintiff is actually "*seeking*" in their non-IDEA action—rather than requiring exhaustion whenever a plaintiff *could*

have sought IDEA remedies. *See Fry*, 137 S. Ct. at 755. Here, Miguel was seeking money damages and a declaration that Sturgis violated the ADA for years.

2. Notwithstanding Section 1415(*l*)'s clear text, the Sixth Circuit and other appellate courts have held that exhaustion is required any time a non-IDEA claim involves the denial of an appropriate education, regardless of the relief sought. *See* App. 7a ("A lawsuit that seeks relief for the denial of an appropriate education is subject to section 1415(*l*), even if it requests a remedy the IDEA does not allow."); *McMillen*, 939 F.3d at 647-48 (adopting this position and citing other circuits).

This approach disregards statutory language in favor of a pure policy argument: that Congress must have intended for state administrative hearing officers, who are "educational professionals," to "have at least the first crack at [addressing] educational shortfalls." *McMillen*, 939 F.3d at 648 (citation omitted). In these courts' view, "[a]llowing a plaintiff complaining about the denial of a [FAPE] to avoid exhaustion 'merely by tacking on a request for money damages' would subvert the procedures Congress designed for prompt resolution of these disputes." *Id.* (citation omitted).

Policy concerns cannot overcome Section 1415(*l*)'s plain language. *See D.D.*, 2021 WL 5407763, at *13 (Bumatay, J. concurring in part and dissenting in part) (rejecting this argument because "[a]t all times, we must be guided by the plain meaning of the statute"). But the argument is also unpersuasive on its own terms. A student who seeks relief the IDEA *can* provide would still be required to exhaust that request. *See Fry* U.S. Br. 32. And if the student seeks *only* remedies that the IDEA cannot offer (as was the

case with Miguel, post-settlement), requiring exhaustion would force the parties to participate in a time-consuming, adversarial, and potentially costly hearing that will create unnecessary burdens for all involved. That makes little sense, given that the student will inevitably fail to get the relief he seeks, and the parties will necessarily have to start over in court.

3. *Fry* ultimately did not resolve whether Section 1415(*l*)'s exhaustion requirement applies to non-IDEA claims for money damages because the Court ruled for the petitioner on other grounds. 137 S. Ct. at 752 n.4 ("[W]e leave [this question] for another day . . . ."); *see also id.* at 754 n.8. In the wake of that decision, lower courts have generally conformed to the dominant (but atextual) view that exhaustion is required whenever a non-IDEA claim involves the denial of an appropriate education, regardless of whether the relief sought is actually available in IDEA proceedings. *See McMillen*, 939 F.3d at 647-48; *D.D.*, 2021 WL 5407763, at *9 (interpreting circuit precedent to adopt the majority position).

At the same time, though, the lower courts have recognized that "[t]he question may be a closer one than the circuit scorecard suggests." *McMillen*, 939 F.3d at 647. For instance, even as it aligned with the majority view, the Fifth Circuit took pains to observe that the Solicitor General's position in *Fry* was the "textualist" one. *Id.* at 647-48; *see also Heston*, 816 F. App'x at 983 (again acknowledging the "good 'textualist case'" on the other side (citation omitted)).

Similarly, the First Circuit has expressed some hesitation post-*Fry* about whether the prevailing atextual approach is correct. *See Doucette*, 936 F.3d at 31 (acknowledging that "by its terms, § 1415(*l*) does

not appear to require exhaustion of the Doucettes' [damages] claim because that claim does not 'seek[] relief that is also available under [the IDEA]'" and noting that *Fry* "left open" this question (alterations in original)). And in the Ninth Circuit's recent en banc decision in *D.D.*, five judges dissented from the majority on this point. *See* 2021 WL 5407763, at *11-14 (Bumatay, J., concurring in part and dissenting in part) ("Because damages are not a form of relief available under the IDEA, I would hold that plaintiffs who seek them are generally not required to exhaust the IDEA process.").

4. Because this second question goes to whether exhaustion was required under Section 1415(*l*) in the first place, it naturally accompanies the question whether, if exhaustion was required, Miguel qualified for a futility exception. It would make good sense for this Court to answer this outstanding issue from *Fry*, so that families, schools, and courts will no longer be forced to wrestle with the matter. And if it does, the Court should adopt the straightforward meaning of Section 1415(*l*)'s plain text.

* * *

This case is an ideal vehicle for this Court to address both questions presented. Each was squarely preserved and decided by the Sixth Circuit below. *See* App. 7a-8a, 10a-14a. And reversal on either question would allow Miguel's ADA case to go forward. By contrast, leaving the Sixth Circuit's decision in place will penalize students like Miguel—forcing them to needlessly reject the possibility of getting their education back on track as soon as possible, at the stark cost of preserving their rights under another statute. That is exactly the result Congress intended to avoid. Certiorari is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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