Nos. 26-1095, 26-1171

In The United States Court Of Appeals For The First Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee / Cross-Appellant,

v.

STATE OF MAINE,

Defendant-Appellant / Cross-Appellee.

On Appeal from the United States District Court
for the District of Maine
No. 1:24-cv-00315

BRIEF OF *AMICI CURIAE* DISABILITY RIGHTS MAINE, AMERICAN CIVIL LIBERTIES UNION OF MAINE, GLAD LAW, AND CENTER FOR PUBLIC REPRESENTATION IN SUPPORT OF AFFIRMANCE

Corin R. Swift
Rochelle Ballantyne
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, New York 10019
(212) 839-5300

Ryan P. Mulligan
SIDLEY AUSTIN LLP
60 State Street, 36th Floor
Boston, MA 02109
(617) 223-0300

Christopher A. Eiswerth
Counsel of Record
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
(202) 736-8000
ceiswerth@sidley.com

Counsel for Amicus Curiae
Disability Rights Maine

(*additional counsel listed on inside cover*)

Mary L. Bonauto
Hannah Hussey
GLAD LAW
257 Deering Ave.
Portland, ME 04103
(617) 426-1350
mbonauto@gladlaw.org
hhussey@gladlaw.org

Counsel for Amicus Curiae
GLAD Law

Anahita D. Sotoohi
Carol J. Garvan
Zachary L. Heiden
AMERICAN CIVIL LIBERTIES
UNION OF MAINE
P.O. Box 7860
(207) 619-8687
Portland, ME 04112
asotoohi@aclumaine.org
cgarvan@aclumaine.org
zheiden@aclumaine.org

Counsel for Amicus Curiae
ACLU of Maine

Kathryn Rucker
Steven Schwartz
CENTER FOR PUBLIC REPRESENTATION
5 Ferry Street, Suite 314
Easthampton, MA 01027
krucker@cpr-ma.org
sschwartz@cpr-ma.org

Counsel for Amicus Curiae
Center for Public Representation

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), *amici curiae* Disability Rights Maine, the American Civil Liberties Union of Maine, GLAD Law, and the Center for Public Representation state that they are non-profit entities that do not have parent corporations. No publicly held corporation owns ten percent or more of any interest or stock in Disability Rights Maine, the American Civil Liberties Union of Maine, GLAD Law, or the Center for Public Representation.

STATEMENT REGARDING ORAL ARGUMENT

This appeal presents an important question: whether parties who obtained a final judgment on the condition that the court approve and retain jurisdiction to enforce their settlement agreement may later modify the terms of that settlement by mutual agreement, without satisfying Rule 60(b)'s standards. Oral argument would facilitate a full presentation of the issues and aid the Court, particularly given the lack of adversity between the Parties. Both the United States and Maine challenge the order below, and neither defends it. Consistent with Judge Dunlap's April 17, 2026 order, "[s]hould argument be scheduled, the Coalition [will] file a motion for leave to appear" to defend the district court's order.

TABLE OF CONTENTS

Page

CORPORATE DISCLOSURE STATEMENT i
STATEMENT REGARDING ORAL ARGUMENT iii
TABLE OF AUTHORITIES iv
STATEMENT OF INTEREST 1
INTRODUCTION AND SUMMARY OF ARGUMENT 4
BACKGROUND 6
I. The United States Sued Maine For Violating The ADA. 6
II. The Parties Entered The Agreement And Asked The Court To Retain Jurisdiction. 7
III. The District Court Denied The Motion To Modify The Agreement 10
ARGUMENT 12
I. The District Court Correctly Held That Rule 60(b)(5) Supplies The Governing Standard. 122
A. Rule 60(b) governs relief from a final order. 12
B. The modification clause does not provide a different standard. 15
II. The District Court Did Not Abuse Its Discretion In Denying The Joint Motion To Modify. 18
A. Rule 60(b)(5) requires proof of a significant, unanticipated change. 18
B. The Parties identified no significant change warranting modification. 21
C. The proposed modifications are not suitably tailored or in the public interest. 25
CONCLUSION 29

TABLE OF AUTHORITIES

Page(s)

Cases

Ackermann v. United States,
340 U.S. 193 (1950) 19

Agostini v. Felton,
521 U.S. 203 (1997) 22

Aronov v. Napolitano,
562 F.3d 84 (1st Cir. 2009) 14

In re Black Farmers Discrimination Litig.,
950 F. Supp. 2d 196 (D.D.C. 2013) 13

Blatt v. Cabela's Retail, Inc.,
No. 5:14-cv-04822, 2017 WL 2178123 (E.D. Pa. May 18, 2017) 2

BLOM Bank SAL v. Honickman,
605 U.S. 204 (2025) 13, 15, 20

Bragdon v. Abbott,
524 U.S. 624 (1998) 2

Carter v. City of Charleston,
13 F. App'x 135 (4th Cir. 2001) 13

Ctr. for Biological Diversity v. EPA,
No. 11-CV-00293, 2025 WL 901944 (N.D. Cal. Mar. 25, 2025) 23

Bureau of Consumer Fin. Prot. v. Townstone Fin., Inc.,
350 F.R.D. 32 (N.D. Ill. 2025) 23

In re Child of Barni A.,
314 A.3d 148 (Me. 2024) 2

Daniels v. Hughes,
147 F.4th 777 (7th Cir. 2025) 13

Frew ex rel. Frew v. Hawkins,
540 U.S. 431 (2004) 19, 23, 24

Gonzalez v. Crosby,
545 U.S. 524 (2005) 17

Horne v. Flores,
557 U.S. 433 (2009) 20, 23, 24, 25

Hutchinson ex rel. Julien v. Patrick,
636 F.3d 1 (1st Cir. 2011).....5, 14, 15

Keeling v. Sheet Metal Workers Int'l Ass'n, Local 162,
937 F.2d 408 (9th Cir. 1991) 13

Kelly v. Wengler,
822 F.3d 1085 (9th Cir. 2016)..... 13

King v. Greenblatt,
127 F.3d 190 (1st Cir. 1997) 25

Kokkonen v. Guardian Life Ins. Co. of Am.,
511 U.S. 375 (1994) 13

Ne. Ohio Coal. for the Homeless v. Husted,
696 F.3d 580 (6th Cir. 2012) 14

N.Y. State Ass'n for Retarded Child., Inc. v. Carey,
706 F.2d 956 (2d Cir. 1983)..... 23

Olmstead v. L.C. ex rel. Zimring,
527 U.S. 581 (1999) 1, 6

Rosie D. v. Patrick,
497 F. Supp. 2d 76 (D. Mass. 2007) 3

Rufo v. Inmates of Suffolk Cnty. Jail,
502 U.S. 367 (1992) .....*passim*

State v. J.R.,
191 A.3d 1157 (Me. 2018)..... 2

State v. P.S.,
224 A.3d 593 (Me. 2020) 2

Williams v. Kincaid,
45 F.4th 759 (4th Cir. 2022) 2

Statutes

42 U.S.C. § 12132 ..... 1, 6

Rules

Fed. R. App. P. 29 1

Fed. R. Civ. P. 41 16

Fed. R. Civ. P. 60(b) ..... *passim*

STATEMENT OF INTEREST[1]

The Americans with Disabilities Act (ADA) bars public entities from discriminating in the provision of services, programs, and activities based on disability, 42 U.S.C. § 12132, including through the "unjustified institutional isolation of persons with disabilities," *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 600 (1999). Disability Rights Maine ("DRM"), the American Civil Liberties Union of Maine, GLAD Law, and the Center for Public Representation ("CPR") (collectively, the "Coalition") have decades of experience advocating for marginalized groups, including children with behavioral-health disabilities, and ensuring the enforcement of the ADA and *Olmstead*.

DRM is Maine's federally designated Protection and Advocacy ("P&A") agency, authorized by Congress to protect individuals with disabilities from unlawful treatment and to monitor state compliance with federal disability law. Its 2019 complaint prompted the United States's investigation, findings of violations, and ultimately this action. DRM serves many of the children who

[1] This brief is filed pursuant to the Court's April 17, 2026 order granting the Coalition leave to file an amicus brief in support of affirmance. No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund its preparation or submission; and no person other than the Coalition, its members, and its counsel contributed money intended to fund its preparation or submission. *See* Fed. R. App. P. 29(a)(4)(E).

stand to benefit from the settlement agreement at issue in this appeal (the "Agreement"); all are among the population that DRM is statutorily authorized to represent. And under the Agreement, Maine must meet with DRM on a quarterly basis to obtain DRM's insight into the needs of children and their families and to receive feedback on its progress in expanding the array and timeliness of community services. *See* Appendix ("A._") A.61.[2]

The ACLU of Maine is a nonprofit, nonpartisan organization founded in 1968 to advance the civil rights and civil liberties of all Mainers. It has repeatedly advocated in the courts for the rights of children in Maine, including through amicus briefs in support of children receiving services in their communities. *See, e.g.*, *State v. P.S.*, 224 A.3d 593 (Me. 2020); *In re Child of Barni A.*, 314 A.3d 148 (Me. 2024); *State v. J.R.*, 191 A.3d 1157 (Me. 2018).

GLAD Law is a nonprofit organization founded in 1978 to achieve equal justice under law for LGBTQ and all other people through litigation, policy, and education. GLAD Law has advocated under the ADA for decades, including in *Bragdon v. Abbott*, 524 U.S. 624 (1998); *Williams v. Kincaid*, 45 F.4th 759 (4th Cir. 2022); and *Blatt v. Cabela's Retail, Inc.*, No. 5:14-cv-04822, 2017 WL 2178123 (E.D. Pa. May 18, 2017). It has also advocated for the rights of children with

[2] Citations to "Add.__" refer to the addendum to Maine's principal brief.

disabilities in Maine and supported public-policy changes to build and strengthen Maine's behavioral-health infrastructure.

CPR is a national advocacy organization dedicated to enforcing and expanding the rights of people with disabilities and others who are in segregated settings. CPR provides technical assistance and support to a network of federally funded P&A programs in each State and territory, and it has assisted P&A partners like DRM seeking to reform their state Medicaid-funded behavioral-health service systems. In 2001, CPR brought groundbreaking class-action litigation alleging that Massachusetts violated federal Medicaid law by failing to provide medically necessary services to children with serious emotional disturbance. Following the Court's extensive liability decision, CPR negotiated a court-ordered judgment to reform Massachusetts's mental-health system, which included many of the reforms set forth in the Agreement. *See Rosie D. v. Patrick*, 497 F. Supp. 2d 76 (D. Mass. 2007).

The Agreement, if faithfully enforced, will ensure that Maine's behavioral-health system complies with its obligations under the ADA and will dramatically improve the lives of Maine's children. Efforts to undermine the Agreement, including the Parties' attempt to dilute its requirements—without any showing of changed circumstances or necessity—will have the opposite

effects. Because neither Party defends the district court's order, the Coalition submits this brief so the Court has the benefit of a fully adversarial presentation.

INTRODUCTION AND SUMMARY OF ARGUMENT

The United States sued Maine for failing to serve children with behavioral-health disabilities in the most integrated setting appropriate to their needs. Rather than litigate, the Parties settled. Maine committed to a multi-year process that would reform and expand its behavioral-health system. To ensure the State honored that commitment, the Parties made the Agreement contingent on the district court's approval and its retention of jurisdiction to enforce the Agreement's terms. A.39. They also agreed to engage an Independent Reviewer—an outside expert who would monitor implementation, assess and publicly report on Maine's progress, and determine whether children and families are receiving the services that the Agreement promises.

But just months after the court approved the Agreement, before any Reviewer had been hired, the Parties jointly moved to eliminate the position and to cut back other core provisions. A.83-85. Neither Party disputes that the Agreement is part of the court's order. Nor do they deny that the Agreement requires court approval for any substantive modification. A.71 Yet neither has shown that continued compliance with the Agreement would be unduly onerous, unworkable, or detrimental to the public interest. The Parties instead

minimize the proposed modifications and their effect on children and families. The United States contends that the Agreement of the Parties is, itself, the required change in circumstances. And Maine contends that the Agreement's modification clause displaces Rule 60(b) without identifying any standard that would take its place.

The Coalition's position has been the same from the start. Because the Parties seek relief from a final order, and because the Agreement requires judicial approval of any modification, the Parties must satisfy Rule 60(b). *See Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 378 (1992); *Hutchinson ex rel. Julien v. Patrick*, 636 F.3d 1, 11 (1st Cir. 2011). That standard matters here because the proposed modifications would remove core provisions: independent oversight, outreach to families, training for providers, and reintegration planning for youth at Long Creek Youth Development Center.

The district court correctly held that the standards of Rule 60(b) govern, and it applied the flexible standard *Rufo* prescribes. Add.16-24. The Parties never identified a significant change in circumstances warranting modification. What changed was their view of what the Agreement should contain. If that were enough, the court's approval and continuing jurisdiction would be a formality, and every protection in the Agreement would last only until the Parties next agreed to abandon it. Rule 60(b)(5) requires more. And because the

modifications are not tailored to any change and would harm the children the Agreement was meant to serve, the district court's order should be affirmed.

BACKGROUND

I. The United States Sued Maine For Violating The ADA.

Title II of the ADA bars public entities from discriminating against people with disabilities in the provision of services, programs, or activities. 42 U.S.C. § 12132. In *Olmstead*, the Supreme Court held that "[u]njustified isolation" is "discrimination based on disability." 527 U.S. at 597. That is because unnecessary institutionalization "perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life" and "severely diminishes" their "everyday life activities." *Id.* at 600-01.

Maine's behavioral-health system for children has long fallen short. Drawing on its experience representing children and families denied access to integrated behavioral-health services, DRM filed a complaint with the Department of Justice. *See* ECF No. 35 at 3 (citing ECF No. 24 at 2). The Department opened an investigation in January 2021 and, on June 22, 2022, found that Maine was violating the ADA by failing to provide community-based behavioral-health services to children who needed them. *See* A.41.

The United States filed this action on September 9, 2024. A.38. The complaint alleged that children with behavioral-health disabilities "are

unnecessarily segregated—or at serious risk of segregation—in institutions because Maine has failed to provide them access to the behavioral health services they need in the community." A.15 ¶ 2. Community-based services were too often out of reach, *see* A.30 ¶ 114, and therapeutic foster-care homes too few, *see* A.26-27 ¶¶ 83-87. Further, Maine used Long Creek, its juvenile detention facility, as a de facto psychiatric facility, confining children with behavioral-health disabilities in their cells for up to 23 hours a day, *see* A.31-32 ¶¶ 123-131.

II. The Parties Entered The Agreement And Asked The Court To Retain Jurisdiction.

In November 2024, the United States and Maine executed a settlement agreement to resolve the United States's claims. A.74. The Agreement aims to strengthen Maine's community-based services, ensure timely access to them, and provide children and their families with adequate service planning and care coordination. *See* A.41-43.

Maine agreed to "furnish all services th[e] Agreement describes" consistent with each child's and family's "preferences, goals, needs, and abilities." A.42 § I(I). Those obligations begin with a single, comprehensive assessment of a covered child's behavioral-health needs, including children arrested and referred to the Maine Department of Corrections. *See* A.45 § III(A). Maine also agreed to coordinate care, expand community-based services

statewide, furnish them in time to prevent unnecessary institutionalization, and tell families about available services and their rights protected by the Agreement. *See* A.46 § III(B); A.52 § IV; A.54 § V. Maine further agreed to develop and train providers, create a detailed implementation plan, and begin reintegration planning when a child enters a juvenile correctional facility. *See* A.56 § VI; A.59 § IX(B); A.61 § IX(G).

To verify Maine's compliance, among other things, the Parties agreed to select an Independent Reviewer with expertise in home- and community-based services for children with behavioral-health disabilities. *See* A.65-68 § XI. The Reviewer would "gather, analyze, and report on information and data reflecting the State's progress in complying with all sections of this Agreement." A.65 § XI(B)(1). To do so, the Reviewer would inspect children's residences and programs, review individual service plans and case files, and interview children, families, providers, and State staff. A.66 § XI(B)(2).

The Reviewer would also check the State's service-planning process. If, in any reporting period, more than ten percent of service plans reflected a family's choice to decline services in a family home or the State's determination that it could not provide them there, the Reviewer would examine those plans, interview the affected families, and provide technical assistance to ensure the State was "proceeding from the assumption that Children can be served in a

Family Home." A.51 § III(B)(8)(vi)-(vii). Each year, the Reviewer would issue "a comprehensive public report on the State's compliance with the terms of the Agreement," "specify[ing] how the State is or is not in compliance with each of its obligations." A.66 § XI(C).

The Agreement specifies how it may be modified. Section XIV(G) provides that the Agreement "may be modified only by consent of the Parties in writing, signed by both Parties *and approval of the Court*." A.71 (emphasis added). The Parties carved out one exception: they may extend "any time limit or deadline in th[e] Agreement, other than the termination date," by written mutual consent alone. *Id.* Every other change requires court approval. *See id.* The Agreement includes an integration clause rendering unenforceable any "statement, promise, or agreement, either written or oral, … that is not contained in th[e] Agreement." *Id.* § XIV(K).

The Parties also made the Agreement contingent on the court's approval and retention of "jurisdiction over this case for the purposes of enforcing the Agreement in accordance with its terms and for its duration." A.69 § XII(D). Absent such an order, the Agreement would be "null and void," and the United States would "have the right to revive any claims." *Id.*

On the Parties' joint motion, ECF No. 17, the district court entered the requested order on December 20, 2024. It "conditionally dismisse[d]" the

action, attached the Agreement, and "specifically retain[ed] jurisdiction to enforce the Parties' Settlement Agreement ... in accordance with its terms and for its duration." A.39.

III. The District Court Denied The Motion To Modify The Agreement.

Less than nine months later, before any Reviewer was in place, the Parties jointly moved to modify the Agreement. *See* A.83; A.127-168.[3] First, they sought to eliminate the Reviewer because the United States had "reconsidered its earlier position and now support[ed] self-reporting by Maine … as a means of updating the United States on compliance with the Settlement Agreement." A.85; *see, e.g.*, A.151-155. Second, they proposed what they called "minor changes" to the Agreement's substantive requirements. A.83. Those changes would remove protections for justice-involved children, *see* A.131; A.135; A.148, limit community outreach, A.140-141, and reduce provider training, *see* A.143.

Because "any opposition to or comments on the details of the Proposed Amended Agreement [were] unrepresented by the existing parties," the district court granted the Coalition leave to participate as amicus. ECF No. 35 at 5. The

[3] As the Agreement required, A.65 § XI(A)(1), Maine issued a request for proposals for the Reviewer in February 2025 and conditionally awarded the contract in April 2025. Maine Br. 13-14. It withdrew the award on May 16, 2025 because the United States declined to approve the selection. *Id.*

court heard argument and requested supplemental briefing on its authority to approve or reject the proposed modification. ECF Nos. 51-57.

On November 24, 2025, the district court denied the joint motion to amend without prejudice. Add.24. It first held that Rule 60(b)'s standards govern "[b]ecause 'the need for court approval of revisions in the terms of the Agreement closely resembles the process for amending a conventional consent decree,'" and the order attaching the Agreement and retaining jurisdiction is "akin to a consent decree." Add.16 (quoting *Hutchinson*, 636 F.3d at 11) (cleaned up). It then held that the Parties had not shown "a significant change either in factual conditions or in law" that would "render[] continued enforcement detrimental to the public interest" and permit modification under Rule 60(b)(5). Add.22 (quoting *Horne v. Flores*, 557 U.S. 433, 447 (2009)). Because the Parties failed to show such a change, the court did not reach whether the proposed modifications were appropriately tailored. Add.24.

Maine appealed, and the United States cross-appealed. A.10; A.12. Maine asks this Court to vacate and remand. The United States asks it to reverse with instructions to grant the motion. Maine Br.29; U.S. Br.25.

ARGUMENT

I. The District Court Correctly Held That Rule 60(b)(5) Supplies The Governing Standard.

The Parties asked the court to modify its own order, not merely a private contract. Rule 60(b) governs that request, and the United States does not argue otherwise. *See* U.S. Br.9-24.[4] Maine, however, insists that the Agreement's modification clause displaces Rule 60(b). Maine Br.20-29. It does not. The clause requires "approval of the Court" for any change beyond a deadline extension, A.71 § XIV(G), which presupposes the kind of judicial scrutiny that Rule 60(b) contemplates. Maine never says what other standard applies. A court-approval requirement with no standard behind it would mean nothing, and the children protected by the Agreement would have no assurance that its terms will outlast the Parties' next change of heart.

A. Rule 60(b) governs relief from a final order.

The Parties voluntarily entered the Agreement. *See* A.70 § XIV(D); A.74. They conditioned its effectiveness on the court approving its terms and retaining jurisdiction to enforce them. *See* A.69 § XII(D). The court did both. Its order "conditionally dismiss[ed]" the action, attached the Agreement, and

[4] The United States asks this Court to adopt Maine's requested remand only if this Court both rejects the United States's Rule 60(b)(5) arguments and accepts Maine's position. U.S. Br.9.

"specifically retain[ed] jurisdiction to enforce [it]." A.39 (citing *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 381 (1994)); *see* A.40-82.

That choice had consequences. Had the Parties simply settled and dismissed the case, the Agreement would be an ordinary contract, and modifying it would be the Parties' business alone. But when a dismissal order makes the parties' obligations part of the order, the situation is "quite different." *Kokkonen*, 511 U.S. at 381. The Agreement became "enforceable as a judicial decree" and "subject to the rules generally applicable to other judgments and decrees." *Rufo*, 502 U.S. at 378; *accord Kelly v. Wengler*, 822 F.3d 1085, 1095, 1098 (9th Cir. 2016) ("Under federal law, a document incorporated into a dismissal order is part of the order.").

For relief from a final judgment, "[i]t is Rule 60(b)'s standard—and *only* Rule 60(b)'s standard—that applies." *BLOM Bank SAL v. Honickman*, 605 U.S. 204, 214 (2025). That holds for settlements a court made part of its order: "When a court has embodied the settlement agreement in a judicial decree, Federal Rule of Civil Procedure 60(b) governs modifications." *Daniels v. Hughes*, 147 F.4th 777, 785 (7th Cir. 2025) (citing *Rufo*, 502 U.S. at 378); *accord Keeling v. Sheet Metal Workers Int'l Ass'n, Local 162*, 937 F.2d 408, 410 (9th Cir. 1991); *Carter v. City of Charleston*, 13 F. App'x 135, 138 (4th Cir. 2001); *In re Black Farmers Discrimination Litig.*, 950 F. Supp. 2d 196, 199-201 (D.D.C. 2013). The Parties asked for exactly

this arrangement, and the district court gave it to them. *Compare* ECF No. 17-1 (proposed order), *with* A.39 (order).

Maine concedes that "Rule 60(b) is an available method to modify the Settlement Agreement." Maine Br.26. And it now acknowledges that "the Agreement functionally was incorporated into the Court's order of dismissal." *Id.* at 25; *contra* ECF No. 54 at 2 ("[T]he Court did not incorporate the terms of the Parties' Agreement into the Court's order.").

Maine objects to the court's description of the Agreement as "akin to a consent decree," Maine Br.24-25 (quoting Add.16), but it never explains why the label matters. Rule 60(b) reaches any "final judgment, order, or proceeding," not just consent decrees. And in this Circuit, "it is the reality, not the nomenclature," that counts. *Aronov v. Napolitano*, 562 F.3d 84, 90 (1st Cir. 2009) (en banc); *see Hutchinson*, 636 F.3d at 9.[5] The reality is that the Agreement's terms are part of a final order. Changing them means relief from that order, and the path to that relief runs through Rule 60(b).

[5] Maine now discounts *Aronov*—its leading authority below, *see* ECF No. 54 at 1—and *Hutchinson* as fee cases. Maine Br.26-27. But deciding those fee questions required this Court to ask whether a court-approved settlement functions as a consent decree, the same inquiry here. *See Aronov*, 562 F.3d at 89-92; *Hutchinson*, 636 F.3d at 9-11. And *Hutchinson* answered it by pointing to features present here: retained jurisdiction and a court-approval requirement for modifications. 636 F.3d at 11 & n.3.

B. The modification clause does not provide a different standard.

Maine's principal argument is that Section XIV(G)—the Agreement's modification clause—lets the Parties escape Rule 60(b) in favor of some other standard. Maine Br.20-29. The extent to which the Parties can contract around Rule 60(b) is questionable. *Cf. Ne. Ohio Coal. for the Homeless v. Husted*, 696 F.3d 580, 602 (6th Cir. 2012) ("Even when consent decrees explicitly provide instructions for their own modification, Rule 60(b) governs."). But this clause does not try to set a lower bar for substantive changes, as the district court correctly concluded. *See* Add.5-12, Add.16.

Section XIV(G) requires both Parties' written consent and "approval of the Court" for any modification beyond deadline extensions. A.71. This Court has addressed a nearly identical clause—one allowing "modification only upon mutual written assent of the parties *and* with the court's concurrence." *Hutchinson*, 636 F.3d at 11. It explained that "[t]he need for court approval of revisions in the terms of the Agreement closely resembles the process for amending a conventional consent decree." *Id.* at 11 (citing *Aronov*, 562 F.3d at 91; Fed. R. Civ. P. 60(b)(5)). Section XIV(G) says the same thing in nearly the same words.

Maine's contract arguments do not change that interpretation. *First*, Maine points to nothing in the text that supplies another standard. It notes only

that the clause does not mention Rule 60(b)'s enumerated grounds, such as "mistake" or "fraud." Maine Br.25. That gets things backwards. Rule 60(b) is the default for relief from a final order. *BLOM Bank*, 605 U.S. at 214. The question is whether the Parties displaced it, and nothing in Section XIV(G) suggests that is the case for substantive modifications.

Second, applying Rule 60(b) does not make the clause superfluous. *Contra* Maine Br.25-26. The clause does real work: it lets the Parties extend deadlines by written consent alone, without going to court. A.71. That carve-out confirms that every other change requires the court's approval. And approval means the court must have some basis for granting or withholding it.

Third, even if the clause were ambiguous and the Agreement did not contain an integration clause, *see* A.71 § XIV(K), Maine identifies no extrinsic evidence that shows the Parties shared an intent to adopt some other standard. Maine's own co-signatory has offered at least two different readings. Below, the United States argued that the clause's text itself supplied the standard, ECF No. 53 at 1, and alternatively urged a relaxed version of Rule 60(b), ECF No. 57 at 2-3. Now on appeal, the United States does not press either reading. It litigates under Rule 60(b)(5) and asks for Maine's contract-based remand only as a fallback. U.S. Br.9. Maine, meanwhile, urged the same review the court applied to the original Rule 41(a)(2) dismissal, ECF No. 54 at 4-6, an argument it seems

to have abandoned after the court observed that Rule 41(a)(2) governs dismissals, not modifications. Add.9. That both Parties opposed Rule 60(b) below does not show they agreed on a replacement standard. Parties who still cannot say what their clause means after a half-dozen briefs cannot claim a shared intent to displace Rule 60(b).

Finally, Maine never says what the alternative is. It insists that Rule 60(b) is not "the only method of modifying the Agreement," Maine Br. 26, but nowhere names another. A court-approval requirement with no standard behind it is no standard at all. It would let the Parties rewrite the Agreement however they wish, reducing "approval of the Court" to a formality. Contract law forbids that reading. Add.12 ("avoid any interpretation that renders a provision meaningless" (quoting *Zhao v. CIEE, Inc.*, 3 F.4th 1, 5 (1st Cir. 2021)). The district court thus rightly refused to read the Agreement to require approval "without any analysis or workable standard of review." *Id.* Were it otherwise, every protection in the Agreement would be secure only until the Parties next agree to abandon it. That includes everything from assessments and reintegration plans for justice-involved children to independent oversight of the State's compliance.

II. The District Court Did Not Abuse Its Discretion In Denying The Joint Motion To Modify.

Modification of a final judgment or order is permitted only "under a limited set of circumstances." *Gonzalez v. Crosby*, 545 U.S. 524, 528 (2005). Under Rule 60(b)(5), the movant must show "a significant change in circumstances warrants revision" and that "the proposed modification is suitably tailored to the changed circumstance." *Rufo*, 502 U.S. at 383. The district court applied that test and held that the Parties "failed to establish 'a significant change either in factual conditions or in law' sufficient to justify modification." Add.23 (quoting *Horne*, 557 U.S. at 447).

The Parties now say that the court applied Rule 60(b)(5) too rigidly. But they identify no change in circumstance that the court overlooked. Nor do they show that the Agreement, as approved, has become onerous, unworkable, or detrimental to the public interest. Absent evidence of these threshold criteria being satisfied, the district court did not abuse its discretion in denying modification.

A. Rule 60(b)(5) requires proof of a significant, unanticipated change.

Rule 60(b)(5) permits relief from a final order when "applying [a judgment] is no longer equitable." Fed. R. Civ. P. 60(b)(5). That requires much

more than a showing that "it is no longer convenient to live with the terms of [the Agreement]." *Rufo*, 502 U.S. at 383.

The analysis proceeds in two steps. At the first, the movant must "show[] either a significant change in factual conditions or in law." *Id.* at 384. A sufficient factual change could include situations where (1) changed conditions make compliance with the agreement "substantially more onerous" than expected, (2) compliance proves "unworkable because of unforeseen obstacles," or (3) continuing with the agreement as written "would be detrimental to the public interest." *Id.* Each scenario turns on what has happened since the decree was entered, not on a party's second thoughts about terms it accepted. That is why a factual change ordinarily must be unanticipated: "modification should not be granted where a party relies upon events that actually were anticipated at the time it entered into a decree." *Id.* at 385; *see Ackermann v. United States*, 340 U.S. 193, 198 (1950) ("[F]ree, calculated, deliberate choices are not to be relieved from."). A change in law, for its part, qualifies when "the statutory or decisional law has changed to make legal what the decree was designed to prevent." *Rufo*, 502 U.S. at 388.

Only if the movant clears that threshold does the court ask whether "the proposed modification is suitably tailored to the changed circumstance." *Id.* at 383. And only then does deference to governmental entities come into play. "No

deference is involved in th[e] threshold inquiry." *Id.* at 392 n.14. It is "once a court has determined that a modification is warranted" that "principles of federalism and simple common sense require the court to give significant weight to the views of … government officials who must implement any modification." *Id.*; *see also Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 442 (2004) ("If the State establishes reason to modify the decree, the court should make the necessary changes; where it has not done so, however, the decree should be enforced according to its terms.").

The district court recited and applied that framework. *See* Add.18-24. The Parties' two objections misread both the opinion and the law.

First, the Parties contend that the district court read *BLOM Bank* "as modifying or overruling" *Rufo*, Maine Br. 29; *see* U.S. Br.11-14, and applied Rule 60(b)(6)'s "extraordinary circumstances" test. *See* U.S. Br.14. It did neither. The court cited *BLOM Bank* for two uncontroversial propositions: that Rule 60(b) alone governs relief from a final judgment, Add.15, and that the Rule must be applied by its terms, with respect for finality, Add.17. It then applied *Rufo*'s two-step test, *see* Add.17-24, mentioning Rule 60(b)(6) in a footnote as a more demanding alternative that the Parties could not satisfy either, *see* Add.23 n.7. True, the court referred to "the heightened *Rufo* standard." Add.24. But the comparison was to the "relaxed" alternatives the United States had proposed:

an exception for joint motions and threshold "deference" to government movants. Add.18-20; *see* ECF No. 57 at 2-3. Rejecting those alternatives is not adopting Rule 60(b)(6). It is applying *Rufo* as written.

Second, the Parties argue that "institutional reform litigation" calls for a more lenient standard. Maine Br.30-31; U.S. Br.10-11, 15-17. But the flexibility *Rufo* and *Horne* describe is part of Rule 60(b)(5) itself, and it leaves the movant's burden intact. *Horne* reaffirms that "[t]he party seeking relief bears the burden of establishing that changed circumstances warrant relief." 557 U.S. at 447. Federalism concerns come in at *Rufo*'s second step, where they justify deference to the officials who must carry out a warranted modification. *Rufo*, 502 U.S. at 392 n.14. The district court recognized that. Add.20. Because the Parties never cleared the threshold, *see* Part II.B, *infra*, no deference was due.

B. The Parties identified no significant change warranting modification.

The Agreement had been in effect for less than nine months when the Parties moved to rewrite it. Nothing happened in that time to satisfy *Rufo*'s threshold requirement.

1. *No change in fact.* The Parties did not identify a significant change in factual conditions that would justify any of the proposed modifications.

Begin with the Reviewer. The Parties said that the position was "not necessary" because the United States had "actively and successfully monitored"

Maine's compliance through "mechanisms already in place": Maine's written reports, follow-up questions, and interviews. A.83-85. That says nothing about whether the Reviewer had become "onerous," "unworkable," or "detrimental to the public interest." *Rufo*, 502 U.S. at 384. Nor could the motion be grounded in experience. No Reviewer was in place at the time of the original joint motion, A.85, because the United States declined to approve the contractor Maine selected, Maine Br.14. Maine has since engaged the same contractor as a consultant, reissued the solicitation for the Reviewer position, and conditionally awarded the contract, thus undermining any claim that the Reviewer's role is unworkable or its funding is an unforeseen burden. ECF No. 43 at 6 & n.6; Maine Br.18-19.

In their motion, the Parties pointed out that Maine could "re-allocate funds set aside for the Independent Reviewer." A.85; *see* U.S. Br.19. Yet Maine makes no cost-related complaint in its brief, and neither Party contends the cost bargained for in December 2024 has changed. Costs "known at the time" an agreement is entered do not constitute a "change in factual conditions." *Agostini v. Felton*, 521 U.S. 203, 216 (1997); *see* Add.23. Negotiated salary caps, like the one here, "minimize the cost to jurisdictions." U.S. Br.19 n.5. Regardless, financial constraints matter "in tailoring a consent decree modification," *Rufo*, 502 U.S. at 392-93—the second step which the Parties never reached.

The remaining changes fare even worse. For the provisions on justice-involved children, provider training, and family outreach, the Parties offered only a reference to Maine's unspecified "learned experiences." A.84. They described the changes as "minor." A.83. But *Rufo* excuses the changed-circumstances showing only for "minor changes in extraneous details" like "paint color," 502 U.S. at 383 n.7. The district court correctly found these provisions "intrinsic to the nature of the Agreement." Add.18-19.

2. *No change in law.* No statute had been amended, and no controlling decision had issued when the Parties moved to modify the Agreement. What changed was the Parties' view about what the Agreement should contain. The United States says as much: it "reconsidered its earlier position," A.85, and calls the result a "new policy insight," U.S. Br.18. Courts have rejected the suggestion "that a change in administration, by itself, constitutes good cause or offers an equitable reason sufficient to justify modifying the terms of a settlement agreement under Rule 60(b)(5)." Add.23 (quoting *Ctr. for Biological Diversity v. EPA*, No. 11-CV-00293, 2025 WL 901944, at *8 (N.D. Cal. Mar. 25, 2025)); *see Bureau of Consumer Fin. Prot. v. Townstone Fin., Inc.*, 350 F.R.D. 32, 39 (N.D. Ill. 2025). And the authority cited by the United States is not to the contrary: *Horne*, *Frew*, and *New York State Association for Retarded Children Inc. v. Carey*, 706 F.2d 956 (2d Cir. 1983), all involved real changes on the ground—not just a change

in policy views. Were the rule otherwise, no settlement with the United States could be relied upon beyond the administration that signed it.

3. ***Agreement is not a sufficient change.*** That leaves the United States's argument that "the Parties, as sovereigns, agreeing to modify the Agreement constitutes a significant change" and "[s]o long as the Parties agree to modification, nothing further is required of them." U.S. Br. 15-16. This circular argument treats the request for relief as the reason relief is justified. If a joint motion were itself the changed circumstance, the burden *Rufo* places on the movant would be met whenever the parties agree. 502 U.S. at 383. Court approval would become the rote ratification the district court rightly refused to perform here. Add.12. The United States cites no case requiring that result. Moreover, *Rufo*'s second step would make no sense were this the test. A modification cannot be "suitably tailored to the changed circumstance," *Rufo*, 502 U.S. at 383, when the only circumstance is the request itself.

The United States told the district court that it "does not argue that the mere existence of joint agreement on modification 'effectively binds the Court.'" ECF No. 57 at 2. But that is the effect of its theory. Agreement would satisfy the threshold in every case. That is the reverse of *Rufo*'s design. "No deference is involved" at the threshold, *Rufo*, 502 U.S. at 392 n.14. And where the parties—

governments included—have not established reason to modify, "the decree should be enforced according to its terms." *Frew*, 540 U.S. at 442.

Federalism does not fill the holes in the Parties' arguments. *Horne* and *Frew* involved decrees that had been in force for years. *Horne*, 557 U.S. at 448-49; *Frew*, 540 U.S. at 442. Here, the Maine officials who sought modification are the ones who signed the Agreement nine months earlier. The only commitments binding them are their own. The officials whose position changed are within the federal government, and *Horne* supplies no reason to defer to a change in federal policy. Rather, *Horne*'s "new policy insights," 557 U.S. at 448, came with a record of concrete changes the lower courts had failed to examine: new federal legislation, a new instructional method, structural reforms, and increased funding. *Id.* at 459-70. Nowhere does *Horne* suggest that an official's changed preference is itself a changed circumstance.

C. The proposed modifications are not suitably tailored or in the public interest.

Even if the Parties had shown some change, their proposal would fail at *Rufo*'s second step. A modification must be "tailored to resolve the problems created by the change in circumstances." *Rufo*, 502 U.S. at 391. A reassessment of how best to monitor compliance cannot explain eliminating outreach to families, reducing independent reporting, weakening provider training, conditioning assessments for arrested children on interagency notice, or

abandoning reintegration planning for children in juvenile corrections. *See* Add.2-3; *King v. Greenblatt*, 127 F.3d 190, 195 (1st Cir. 1997) (holding that "the shift in management" of a treatment center for committed individuals was insufficient justification for modification without "inquiry into whether the particular provisions for which modification is sought" are affected). The Parties never tie these changes to any unforeseen development since the Agreement took effect—confirming that the court correctly found no changed circumstances under step one.

The United States answers that federal law requires none of these provisions and that the changes do not "create or perpetuate a constitutional violation." U.S. Br. 22-23. But avoiding a violation is only one limit on a modification; tailoring is another. *Rufo*, 502 U.S. at 391. And *Rufo* warned that a modification "should not strive to rewrite a consent decree so that it conforms to the constitutional floor." *Id.* That federal law does not mandate an Independent Reviewer or a set number of outreach events says nothing about whether eliminating these necessary remedial measures appropriately responds to a significant change in circumstances.

Nor would the proposed modifications serve the public interest. The Agreement entitles a child who is arrested and referred to the Department of Corrections to a Single Assessment. The modification would add a condition:

the arrest and referral must be "made known" to the Department of Health and Human Services. A.131 § III(A)(3)(iv). The same condition would govern reassessment after an arrest. A.135 § III(B)(7)(x)(b). And the modification would strike the requirement that the State "begin community reintegration planning at the point of admission" to a juvenile correctional facility. A.148 § IX(G).

The United States calls these "minor" changes that make arrested children "more ascertainable to Maine." U.S. Br.6. But both departments are arms of the State. The new conditions make a child's right to an assessment dependent upon whether one state agency talks to another. These are the children Maine had been holding at Long Creek as a de facto psychiatric facility because, as its own officials put it, they had "no other options." A.32 ¶ 130; *see* A.31-32 ¶¶ 128-131. Without a reliable assessment trigger and reintegration planning, those children face longer stays and delayed access to the services the Agreement was designed to provide.

The story is the same for outreach and training. The United States describes the outreach change as giving Maine "more flexibility." U.S. Br.6. In fact, the redline strikes the outreach provision almost entirely, including the required annual events at places and times convenient for families. A.141 § V(A). The modification would also strike the requirement for "mandatory, competency-based curricula" for providers and care coordinators. A.143 § VI(I).

Fewer families would learn that these services exist, and the providers who serve them would no longer be held to a mandatory, competency-based standard.

Most consequential of all is the elimination of the Reviewer. A.151-155. The Agreement gave this expert the power to request and review children's records, to enter any program serving children "with or without advance notice," and to interview children, families, and providers. A. 65-68 § XI. If more than ten percent of service plans reflected a determination that a child could not be served in a family home, the Reviewer was charged with examining the basis for those decisions and the adequacy of the planning process. A.51 § III(B)(8)(vi)-(vii); *see* Add.3. And each year, the Reviewer would publish a public report specifying "how the State is or is not in compliance with each of its obligations." A.66 § XI(C).

Despite these unique and important oversight responsibilities, the United States now calls the Reviewer a "middleman in the exchange of data." U.S. Br.6. The Agreement describes something else: an expert on the ground, evaluating facilities and case files and engaged in conversations with families. Elimination of this role would leave no one independent of the Parties to verify compliance. And families and the public would lose their only regular, independent account of whether Maine is keeping its promises.

CONCLUSION

For the foregoing reasons, the district court decision should be affirmed.

Respectfully submitted,

/s/ Anahita D. Sotoohi
Anahita D. Sotoohi
Carol J. Garvan
Zachary L. Heiden
AMERICAN CIVIL LIBERTIES UNION OF MAINE
P.O. Box 7860
(207) 619-8687
Portland, ME 04112
asotoohi@aclumaine.org
cgarvan@aclumaine.org
zheiden@aclumaine.org

Counsel for ACLU of Maine

/s/ Mary L. Bonauto
Mary L. Bonauto
Hannah Hussey
GLAD LAW
257 Deering Ave.
Portland, ME 04103
(617) 426-1350
mbonauto@gladlaw.org
hhussey@gladlaw.org

Counsel for GLAD Law

Christopher A. Eiswerth
Christopher A. Eiswerth
Counsel of Record
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
(202) 736-8000
ceiswerth@sidley.com

Corin R. Swift
Rochelle Ballantyne
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, New York 10019
(212) 839-5300

Ryan P. Mulligan
SIDLEY AUSTIN LLP
60 State Street, 36th Floor
Boston, MA 02109
(617) 223-0300

Counsel for Disability Rights Maine

/s/ Kathryn Rucker
Kathryn Rucker
Steven Schwartz
CENTER FOR PUBLIC REPRESENTATION
5 Ferry Street, Suite 314
Easthampton, MA 01027
krucker@cpr-ma.org
sschwartz@cpr-ma.org

Counsel for Center for Public Representation

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 32(g), the undersigned counsel certifies that:

1. This document complies with the type-volume limit of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B)(i) because this document contains 6,295 words. As permitted by Federal Rule of Appellate Procedure 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Calisto MT font.

/s/ Christopher A. Eiswerth
Christopher A. Eiswerth

CERTIFICATE OF SERVICE

I hereby certify that on this same date, I electronically filed the foregoing document with the United States Court of Appeals for the First Circuit by using the CM/ECF system, which sent notification of such filing to all counsel of record by electronic means.

/s/ Christopher A. Eiswerth
Christopher A. Eiswerth