No. _____

In the Supreme Court of the United States

COMMONWEALTH OF PENNSYLVANIA, ET AL.
Petitioners,

v.

JOSE MONTANEZ, ET AL.,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Third Circuit held that the Commonwealth of Pennsylvania is vicariously liable for violations of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act committed by third-party contractors providing medical services to inmates in state prisons. That holding deepened an acknowledged circuit split, and is inconsistent with this Court's precedents. But no party raised the issue of derivative liability at any point during this litigation. Instead, one week before argument, the Third Circuit *sua sponte* identified that unraised issue and inserted it into the case by requiring the parties to address it. That egregious violation of the party presentation principle warrants summary reversal under *United States v. Sineneng-Smith*, 590 U.S. 371 (2020), and *Clark v. Sweeney*, 607 U.S. 7 (2025) (per curiam).

The questions presented are:

1. Did the Court of Appeals violate the party presentation principle by *sua sponte* inserting the derivative liability issue into the case?

2. Are public entities and recipients of federal funding vicariously liable for Title II and Section 504 violations committed by third-party contractors?

PARTIES TO THE PROCEEDING

Petitioners are the Commonwealth of Pennsylvania, Paula Price, Nurse Mel, Richard Ellers, Mary Patton, C. Wakefield, N. Davis, and John Rivello. Petitioners were Defendants-Appellees below.

Respondents are Jose Montanez (who was Plaintiff-Appellant below), and Rajinder Mahli, Gabrielle Nalley, Dr. Vernon Preston, Dr. David Edwards, and Wellpath Care (who were co-Defendants-Appellees below).

RELATED PROCEEDINGS

United States District Court for the Middle District of Pennsylvania:

> *Montanez v. Price*, No. 3:22-cv-1267 (final judgment entered August 23, 2023)

United States Court of Appeals for the Third Circuit:

> *Montanez v. Price*, No. 23-2669 (judgment entered October 30, 2025)

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INTRODUCTION

In our legal system, courts "are essentially passive instruments of government." *United States v. Sineneng-Smith*, 590 U.S. 371, 376 (2020) (cleaned up). "They do not, or should not, sally forth each day looking for wrongs to right." *Ibid.* Instead, courts must "wait for cases to come to them," and then "decide only the questions presented by the parties." *Ibid.* This principle of party presentation should be simple enough. But the Third Circuit failed to observe it here.

Jose Montanez is an allegedly disabled inmate in a Pennsylvania prison. He brought claims under Title II of the Americans with Disabilities Act ("Title II") and Section 504 of the Rehabilitation Act ("Section 504") against the Commonwealth of Pennsylvania, various Commonwealth employees, and separately-represented individuals employed by a third-party contractor. His operative pleading alleges that his disability was not accommodated, and thus he was excluded from various prison programs, services, and activities. The District Court determined that Montanez had not plausibly alleged such exclusion and dismissed all his claims.

On appeal, Montanez disputed the District Court's conclusion and argued that he stated Title II and Section 504 claims against numerous specifically identified individual defendants. When pressed, he conceded that his claims against these defendants in their individual capacities were legally impermissible. But he clarified that he was also suing these individuals in their official capacities. And—perhaps as an aside—he noted that naming the Commonwealth itself as a defendant was actually "redundant" because the official-

capacity claims should have been treated as claims against the Commonwealth.

Less than a week before oral argument, the Third Circuit ordered the parties to be prepared to address whether the Commonwealth could be derivatively liable for the Title II and Section 504 violations allegedly committed by the employees of the third-party contractor. And after oral argument, the Third Circuit ordered supplemental briefing on this issue.

At oral argument and in its supplemental briefing, the Commonwealth noted that Montanez had never argued that the Commonwealth should be derivatively liable for such violations, and that *sua sponte* introducing the derivative-liability issue into the case would violate the party-presentation principle elucidated in *Sineneng-Smith*.

The Third Circuit ignored the Commonwealth's protestations. By inserting a never-before-raised issue into these proceedings a week before oral argument, the Third Circuit exhibited the very "paternalistic bent" that this Court rebuked in *Sineneng-Smith*. 590 U.S. at 376 n.3. As will be explained *infra*, this case is not an outlier in the Third Circuit, where the court regularly runs afoul of the party-presentation principle by taking over cases and hand-picking issues.

The Third Circuit also ignored the Commonwealth's specific argument that it could not be vicariously liable for any Title II or Section 504 violations committed by employees of the third-party contractor. Instead, the Third Circuit issued a lengthy, precedential opinion holding that the Commonwealth had an "obligation to ensure compliance" with Title II and Section 504, App. 27a, and is thus vicariously liable for those violations.

That holding deepened an acknowledged circuit split on the issue of vicarious liability under Title II and Section 504. *See Jones v. City of Detroit, Michigan*, 20 F.4th 1117, 1121–22 (6th Cir. 2021) (Sutton, C.J.) (acknowledging disagreement with the Fourth, Fifth, and Ninth Circuits); *Ingram v. Kubik*, 30 F.4th 1241, 1257 (11th Cir. 2022) (Pryor, C.J.) (noting that "the courts of appeals are divided" on the availability of vicarious liability). That is, while the Second, Third, Fourth, Fifth, Ninth, and Tenth Circuits have held that Title II and Section 504 impose vicarious liability, the Sixth and Eleventh Circuits have expressly held that vicarious liability is unavailable under those statutes. As will be explained *infra*, the minority view—adopted by the Sixth and Eleventh Circuits—is the correct one, as it is consistent with this Court's decisions regarding the remedies available for violations of various civil-rights statutes. *See, e.g.*, *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998).

These circumstances would ordinarily make this case an ideal vehicle to grant certiorari, order full briefing and oral argument, and issue an opinion clarifying the remedies available under Title II and Section 504. But the Third Circuit's violation of the party-presentation principle offers a much simpler option: Summary reversal and remand, so that the Third Circuit can reconsider this case "shorn of the [derivative-liability] inquiry interjected by the appellate panel and bearing a fair resemblance to the case shaped by the parties." *Sineneng-Smith*, 590 U.S. at 380; *cf. Clark v. Sweeney*, 607 U.S. 7 (2025) (per curiam) (summarily reversing the Fourth Circuit for violating the party-presentation principle).

OPINIONS BELOW

The opinion of the Third Circuit is reported at 154 F.4th 127 (3d Cir. 2025). The opinion of the District Court is not reported but is available at 2023 WL 5435616.

STATEMENT OF JURISDICTION

The Third Circuit entered its judgment on October 8, 2025. On December 12, 2025, Justice Alito extended the time to file a petition for a writ of certiorari to and including February 5, 2026. On January 30, 2026, Justice Alito further extended the time to March 7, 2026.[1] This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Title II of the Americans with Disabilities Act of 1990 provides in relevant part:

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

42 U.S.C. § 12132.

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[1] Because March 7, 2026, is a Saturday, this petition is due by Monday, March 9, 2026. *See* Sup. Ct. R. 30.1.

Section 504 of the Rehabilitation Act of 1973 provides in relevant part:

> No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

29 U.S.C. § 794(a).

STATEMENT OF THE CASE

1. Montanez allegedly suffered a medical episode while incarcerated in a Pennsylvania prison and, as a result, allegedly became disabled. App. 3a–5a. He later filed a pro se lawsuit, naming as defendants the Commonwealth of Pennsylvania and several Commonwealth employees (collectively, with the Commonwealth, the "Commonwealth Defendants"). App. 5a–6a. Montanez also named a private company engaged by the Commonwealth to provide medical care to inmates, and several employees of that private company (collectively, with the private company, the "Medical Contractor Defendants").[2] App. 5a–6a. Among other things, the

[2] Both here and in other cases, the Medical Contractor Defendants are separately represented through private counsel. They are not represented by the Pennsylvania Attorney General.

operative pleading alleged that the defendants failed to accommodate Montanez's alleged disability, which in turn caused him to be excluded from some of the prison's programs, services, or activities in violation of Title II of the Americans with Disabilities Act ("Title II"), 42 U.S.C. § 12132, and Section 504 of the Rehabilitation Act ("Section 504"), 29 U.S.C. § 794. App. 7a–8a.

The District Court dismissed the operative pleading in its entirety for failing to state a claim upon which relief could be granted. App. 7a–8a; App. 63a–64. Montanez appealed and subsequently obtained counsel. App. 8a.

2. In his opening brief before the Third Circuit, Montanez (through counsel) argued that dismissal was improper because the operative pleading plausibly alleged that he was excluded from participating in some of the prison's programs, services, or activities. C.A. Dkt. 30 at 11–18. Montanez also argued that the operative pleading plausibly alleged that several specifically identified individual defendants were deliberately indifferent to that exclusion, thus entitling him to compensatory damages. *Id.* at 18–21.

The Commonwealth Defendants disputed Montanez's arguments. C.A. Dkt. 34 at 23–26. The Commonwealth Defendants also argued that Title II and Section 504 claims against the Commonwealth employees in their individual capacities were prohibited as a matter of law. *Id.* at 25.

In reply, Montanez conceded that the individual-capacity claims were properly dismissed. C.A. Dkt. 46 at 1. He noted, however, that the Commonwealth employees could be sued in their official capacities under Title II and Section 504, as such official-capacity claims are

legally equivalent to claims against the Commonwealth itself. *Id.* at 2. In fact, Montanez argued, "[n]aming [both] the Commonwealth and the prison officials in their official capacities was redundant." *Ibid.*

3. After briefing was complete, the Third Circuit set the matter down for oral argument. But five days before that argument was set to occur, the Third Circuit issued a letter stating that, "[a]t oral argument in this matter, the parties should be prepared to discuss *** [t]he extent to which the Commonwealth remains liable under Title II [and Section 504] for the actions of private contractors providing medical services to inmates within state prisons." App. 37a–38a.

At this point in the litigation, Montanez had never argued that the Commonwealth could or should be derivatively liable for Title II and Section 504 violations allegedly committed by the Medical Contractor Defendants. But—undoubtedly reading the tea leaves in the Third Circuit's cup—Montanez's counsel latched onto this new theory of liability within the first few seconds of her oral argument. C.A. Dkt. 74 at 4 ("[F]or [Montanez's Title II and Section 504] claims for the failure to accommodate his disability, he correctly ***and sufficiently*** proceeds against the State of Pennsylvania." (emphasis added)).

During his turn at the lectern, counsel for the Commonwealth Defendants repeatedly noted that Montanez had not raised this argument himself, and so it was not properly before the court. But the Third Circuit ignored the Commonwealth Defendants' protestations.

4. Following argument, the Court of Appeals issued an order requesting supplemental briefs on the derivative-liability issue, as well as "[t]he relevance, if any, of

federal regulations for determining the extent of [that] derivative liability ***." App. 35a.

In their supplemental brief, the Commonwealth Defendants again argued that the derivative-liability issue was not independently raised by the parties and thus was not properly before the court. C.A. Dkt. 81 at 1–3. In the alternative, the Commonwealth Defendants argued that, under this Court's precedent (and as recognized by other Circuits), the Commonwealth could, at a minimum, not be vicariously liable for the acts of its medical contractors. *Id.* at 3–4. The Commonwealth Defendants also argued that federal regulations cannot expand the scope of the Commonwealth's derivative liability. *Id.* at 5.

5. The Third Circuit again ignored the Commonwealth Defendants' protestations. In a lengthy, precedential opinion, it held not just that the Commonwealth could be derivatively liable for the Title II and Section 504 violations allegedly committed by the Medical Contractor Defendants, but that the Commonwealth had an "obligation to ensure compliance with Title II and Section 504" by those defendants. App. 27a. In substance, this holding imposes vicarious liability on the Commonwealth for those alleged violations. *Cf. Pembaur v. City of Cincinnati*, 475 U.S. 469, 470 (1986) (discussing *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978)) (obliging a party "to control the conduct of *others*" imposes "vicarious liability" on that party) (emphasis in original)).

REASONS FOR GRANTING THE PETITION

I. THE THIRD CIRCUIT VIOLATED THE PARTY-PRESENTATION PRINCIPLE BY SUA SPONTE RAISING THE VICARIOUS-LIABILITY ISSUE

As explained below, the Third Circuit's holding that the Commonwealth is vicariously liable under Title II and Section 504 exacerbates a pre-existing Circuit split, is inconsistent with this Court's precedents, and is legally unsound. But the Third Circuit should not have resolved that issue in the first place, because Montanez's briefing before the Third Circuit did not argue that the Commonwealth should or could be derivatively liable in any manner for the Title II and Section 504 violations allegedly committed by the Medical Contractor Defendants.[3] To the contrary, Montanez's briefing affirmatively asserted that naming the Commonwealth as a defendant was "redundant." C.A. Dkt. 46 at 2.

Apparently dissatisfied with the arguments that Montanez's counsel chose to raise, the Third Circuit took over. Adopting an advisory role, that court carved out Montanez's eventual path to victory against the

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[3] To be clear, Montanez never raised this argument in the District Court either. The District Court dismissed the Commonwealth from this action shortly after Montanez filed his Amended Complaint (the operative pleading), because the District Court believed Montanez was not suing the Commonwealth under Title II or Section 504. App. 67a. Montanez then informed the District Court that he was, in fact, suing the Commonwealth under those statutes. App. 42a. But, like his Third Circuit briefing, his papers before the District Court did not argue that the Commonwealth could or should be derivatively (let alone vicariously) liable for the Medical Contractor Defendants' alleged violations. *See* D. Ct. Dkt. 37 & 38.

Commonwealth by forcing the parties to address the derivative-liability issue and then, unsurprisingly, resolving it in such a way as to impose maximum (i.e., vicarious) liability on the Commonwealth. This Court has repeatedly admonished precisely the type of "interject[ion]" of issues that the Third Circuit executed here. *Sineneng-Smith*, 590 U.S. at 380. And it has very recently expressed its willingness to summarily reverse when such a violation of the party-presentation principle occurs. *See Clark*, 607 U.S. at 10. It should do so here, too.

In *Sineneng-Smith*, a criminal defendant raised a constitutional challenge to a federal criminal statute. 590 U.S. at 374. In the Ninth Circuit, the defendant argued that her own conduct was protected by the First Amendment. *Ibid.* But she "did [not] so much as hint that the statute [was] infirm *** because it trenches on the First Amendment sheltered expression of others." *Id.* at 377.

Like the Third Circuit here, the Ninth Circuit was apparently unsatisfied with the defendant's arguments. So, after oral argument, "[i]nstead of adjudicating the case presented by the parties," it asked for additional briefing and then additional oral argument on several issues, including whether the statute was invalid because it infringed others' First Amendment rights. *Sineneng-Smith*, 590 U.S. at 374–75. "[I]n the redone appeal," the defendant "adopted" and "rode with" the overbreadth argument "suggested by the" Ninth Circuit. *Id.* at 379. Unsurprisingly, the Ninth Circuit found its own argument persuasive, held that the statute was unconstitutionally overbroad, and vacated the defendant's conviction under it. *Id.* at 375.

This Court found that the defendant's sudden embrace of the Ninth Circuit's "suggest[ion]" was not only understandable, but inevitable. *Sineneng-Smith*, 590 U.S. at 379. After all, how could the defendant have done "otherwise" once it became clear that her "own arguments *** did not mesh with the panel's overbreadth theory of the case[?]" *Ibid.*

This Court found that the Ninth Circuit's *sua sponte* "interject[ion]" of the overbreadth issue into the case was improper. *Sineneng-Smith*, 590 U.S. at 380. And it held that the Ninth Circuit's conduct "departed so drastically from the principle of party presentation as to constitute an abuse of discretion." *Id.* at 375. It therefore vacated the Ninth Circuit's judgment and "remand[ed] the case for reconsideration shorn of the overbreadth inquiry *** and bearing a fair resemblance to the case shaped by the parties." *Id.* at 380.

The procedural history of this case is virtually indistinguishable from *Sineneng-Smith*. Here, like there, Montanez "did [not] so much as hint," *id.* at 377, that the Commonwealth could be derivatively liable in his briefs before the Third Circuit. Here, like there, the Third Circuit—"[i]nstead of adjudicating the case presented by the parties," *id.* at 374—asked for additional briefing and oral argument on the derivative-liability issue. Here, like there, Montanez "adopted" and "rode with" the derivative-liability argument "suggested" by the Court of Appeals. *Id.* at 379. And here, like there, the Third Circuit's ultimate resolution of the case "departed so drastically from the principle of party presentation as to constitute an abuse of discretion." *Id.* at 375.

Sineneng-Smith rested on a foundational principle: Federal "courts are essentially passive instruments of

government" that "should not[] sally forth each day looking for wrongs to right," but should instead "wait for cases to come to them" and then "decide only questions presented by the parties" in those cases. 590 U.S. at 376. That principle "is designed around the premise that parties represented by competent counsel know what is best for them, and are responsible for advancing the facts and argument entitling them to relief." *Id.* at 375; *see also Wood v. Milyard*, 566 U.S. 463, 473 (2012) ("For good reason, appellate courts ordinarily abstain from entertaining issues that have not been raised and preserved in the court of first instance. That restraint is all the more appropriate when the appellate court itself spots an issue the parties did not air below ***.") (internal citation omitted); *United States v. Burke*, 504 U.S. 229, 246 (1992) (Scalia, J., concurring) ("The rule that points not argued will not be considered is more than just a prudential rule of convenience; its observance, at least in the vast majority of cases, distinguishes our adversary system of justice from the inquisitorial one.").

This Court very recently relied on this foundational principle in *Clark v. Sweeney*, after the Fourth Circuit "transgressed the party-presentation principle by granting relief on a claim [the petitioner] never asserted[.]" 607 U.S. at 9. This Court admonished that courts "call balls and strikes; they don't get a turn at bat." *Ibid.* (cleaned up). There, the Fourth Circuit's "radical transformation" of the case was so egregious that this court granted certiorari and summarily reversed. *Id.* at 9–10 (quoting *Sineneng-Smith*, 590 U.S. at 380). The Court should take the same course in this case—i.e., grant this petition, summarily reverse the Third Circuit's precedential decision, and "remand the

case for reconsideration shorn of the [derivative-liability issue] *** and bearing a fair resemblance to the case shaped by the parties." *Sineneng-Smith*, 570 U.S. at 380.

True, it is not this Court's function to "correct every perceived error coming from the lower federal courts[.]" *Tolan v. Cotton*, 572 U.S. 650, 659 (2014) (citation omitted). But this Court often summarily reverses where the opinion below reflects "a clear misapprehension" of this Court's precedents and basic legal standards. *Ibid.* That was the case in *Clark*, and that is certainly the case here.

What's more, the Third Circuit's "clear misapprehension" of the party presentation principle is not unique to this case. Rather, its misapprehension is longstanding. *See Bagot v. Ashcroft*, 398 F.3d 252, 256 (3d Cir. 2005) (Becker, J.) (claiming the "discretionary power to address issues that have been waived"). In many cases in which the Pennsylvania Attorney General has been a party, the Third Circuit has effectively hand-selected issues it seems eager to resolve, regardless of party presentation. *See, e.g.*, App. 69a–77a.[4]

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[4] In two of these cases, the Court of Appeals inserted new issues into the case *after* an initial round of briefing in which the parties had already decided which issues to raise. App. 69a–70a (*Vogt* order); App. 74a–75a (*Peifer* letter). In both cases, the Office of Attorney General specifically objected to the Third Circuit's improper takeover of the case, citing *Sineneng-Smith*.

In the other two, the issues were raised by the Court of Appeals before briefing, in orders that simultaneously appointed counsel. App. 71a–73a (*Korb* order); App. 76a–77a (*Talley* order). But this slight variation in procedural posture is irrelevant. As this Court noted in *Sineneng-Smith*, "our system is designed around the premise that parties represented by competent counsel

The Third Circuit's tendency to takeover cases has not abated since *Sineneng-Smith*. *Ibid.* Indeed, since that decision, some judges on the Third Circuit have admonished their colleagues for this proclivity. *See, e.g.*, *Hargrove v. Sleepy's LLC*, 974 F.3d 467, 483 (3d Cir. 2020) (Hardiman, J., dissenting) ("Because the Majority neglects [the party presentation] principle to reach an issue Appellants failed to raise properly, I respectfully dissent.") (citing *Sineneng-Smith*); *Children's Health Def., Inc. v. Rutgers, the State Univ. of New Jersey*, 93 F.4th 66, 93 (3d Cir. 2024), (Jordan, J., dissenting in part) ("My colleagues in the Majority forge ahead *** and, without adversary briefing, choose to answer a question that the District Court didn't.") (citing *Sineneng-Smith*).[5]

A court is supposed to resolve a case as the *parties* present it, not treat it as vehicle for addressing issues on the *court's* agenda. A court is not supposed to *have* an agenda. In our system, the courts "may truly be said to have neither FORCE nor WILL but merely judgment[.]" *The Federalist*, No. 78 (Hamilton).

To curtail what has apparently become a common practice in the Third Circuit, this Court should summarily reverse, reiterating its party presentation precedents.

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know what is best for them, and are responsible for advancing the facts and argument entitling them to relief." 590 U.S. at 375–76.

[5] Although this court denied certiorari in that case, *see* 144 S. Ct. 2688 (2024), the petitioner did not raise the party presentation issue in its petition.

II. IMPOSING VICARIOUS LIABILITY ON THE COMMONWEALTH DEEPENED A CIRCUIT SPLIT

The Third Circuit's holding deepened a recognized circuit split on the availability of vicarious liability under Title II and Section 504. The Eleventh and Sixth Circuits have explicitly held that vicarious liability is unavailable under those statutes. *See Jones v. City of Detroit, Michigan*, 20 F.4th 1117, 1121–22 (6th Cir. 2021) (Sutton, C.J.); *Ingram v. Kubik*, 30 F.4th 1241, 1257 (11th Cir. 2022) (Pryor, C.J.). But the Second, Fourth, Fifth, Ninth, Tenth—and now Third—Circuits have held the opposite, either expressly or by implication. Some of these courts have even acknowledged the divergence among themselves and have engaged with each other's reasoning. *See, e.g.*, *Jones*, 20 F.4th 1121–22 (criticizing the Fourth, Fifth, and Ninth Circuit's rulings); *Ingram*, 30 F.4th at 1257 (stating that "the courts of appeals are divided" on the availability of vicarious liability). So if this Court does not summarily reverse based on the Third Circuit's violation of the party-presentation principle—which it should—then review is warranted to resolve this important and recuring question of federal law.

1. In *Jones*, the Sixth Circuit expressly held that vicarious liability is unavailable under Title II or Section 504. 20 F.4th at 1122. Chief Judge Sutton's decision in that case rested on a few simple, undisputed realities: First, Congress had dictated that the "remedies, procedures, and rights" available under Title II and Section 504 are "coextensive" with those available under Title VI of the Civil Rights Act of 1964. *Id.* at 1119 (citing 42 U.S.C. § 12133, 29 U.S.C. § 794(a), and *Barnes v. Gorman*, 536 U.S. 181, 185 (2002)). Second, Title IX of the

Education Amendments of 1972 (like Title II and Section 504) also mirror the remedies available under Title VI. *Jones*, 20 F.4th at 1120. And third, this Court has explicitly held that vicarious liability is unavailable under Title IX. *Ibid.* (discussing *Gebser v. Lago Vista Ind. Schl. Dist.*, 524 U.S. 274 (1998)).

Because Title IX and Title VI share many important, relevant qualities—e.g., both were passed pursuant to Congress's Spending Clause power—Chief Judge Sutton reasoned that *Gebser*'s holding must apply equally to Title VI. *Jones*, 20 F.4th at 1121. And "[b]ecause [Title II and Section 504] import Title VI's remedial regime, that ends the inquiry"; that is, "[i]f Title VI does not allow vicarious liability, neither do [Title II or Section 504]." *Ibid.*

2. Writing for the Eleventh Circuit in *Ingram*, Chief Judge Pryor expressly adopted Chief Judge Sutton's reasoning. 30 F.4th 1257 ("We agree with the Sixth Circuit."). Like the Sixth, the Eleventh Circuit highlighted that Title II, Section 504, and Title IX all use Title VI's remedies. *Id.* at 1257–58. And because *Gebser* held that vicarious liability is unavailable under Title IX, vicarious liability must likewise be unavailable under Title II and Section 504. *Id.* at 1258–59.[6]

The plaintiff in *Ingram* filed a petition for a writ of certiorari highlighting the Circuit split on the question of vicarious liability. *See Ingram v. Kubik, et al.*, 21-

[6] Technically, the Eleventh Circuit's holding in *Ingram* applied only to Title II. *See* 30 F.4th at 1258. But that was because the plaintiff there conceded that *Gebser* foreclosed vicarious liability under Section 504. *Ibid.* Chief Judge Pryor noted, however, that "the same standards govern claims under both" statutes. *Id.* at 1259.

1426 (U.S.). But the case was dismissed pursuant to Supreme Court Rule 46 before this Court had the opportunity to consider that petition. *Ibid.*

3. In their opinions, Chief Judges Sutton and Pryor both noted that the Fourth, Fifth, and Ninth Circuits had reached the opposite conclusion—i.e., had expressly held that vicarious liability is available under Title II and Section 504. *See Jones*, 20 F.4th at 1121–22 (citing *Delano-Pyle v. Victoria County*, 302 F.3d 567 (5th Cir. 2002), *Duvall v. County of Kitsap*, 260 F.3d 1124 (9th Cir. 2001), and *Rosen v. Montgomery Cnty.*, 121 F.3d 154 (4th Cir. 1997)); *Ingram*, 30 F.4th at 1257 (same). But, as Chief Judge Sutton, noted, "time and circumstances have not favored [these] decision[s]." *Jones*, 20 F.4th at 1121. Regarding the Fourth Circuit's decision in *Rosen*, and the Ninth Circuit's decision in *Duvall*, Chief Judge Sutton noted that neither of these cases addressed *Gebser*.[7] *Jones*, 20 F.4th at 1121–22. And "the Fifth Circuit has acknowledged the possibility that *Delano-Pyle* was wrong because it did not engage with *Gebser*." *Ibid.* (citing *Harrison v. Klein Ind. Sch. Dist.*, 856 F. App'x 480, 483 n.4 (5th Cir. 2021); *Plains Cap. Bank v. Keller Ind. Sch. Dist.*, 746 F. App'x 355, 361–62 (5th Cir. 2018)).

4. But decisions of the Fourth, Fifth, Sixth, Ninth, and Eleventh Circuits do not reveal the truth depth of the circuit split. In its opinion below, the Third Circuit noted that it was joining the Second, Ninth, and Tenth

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[7] In fact, the Fourth Circuit's decision in *Rosen* was "decided before *Gebser* and thus had no reason to consider the relationship between the Supreme Court's conclusions about Title IX and the ADA." *Jones*, 20 F.4th at 1121.

Circuits' conclusions that Title II and Section 504 impose an "obligation" on public entities and federal-fund recipients "to ensure compliance" with those statutes. App. 27a & n.10 (citing *Marks v. Colo. Dep't of Corr.*, 976 F.3d 1087 (10th Cir. 2020), *Armstrong v. Schwarzenegger*, 622 F.3d 1058 (9th Cir. 2010), and *Henrietta D. v. Bloomberg*, 331 F.3d 261 (2d Cir. 2003)). And although not made explicit, that conclusion imposes vicarious liability on public entities and federal-fund recipients under Title II and Section 504. *See Pembaur*, 475 U.S. at 470 (1986) ("oblig[ing a party] to control the conduct of others" imposes "vicarious liability" on that party).[8]

5. The Third Circuit's decision, then, created a 6–2 split regarding the availability of vicarious liability under Title II and Section 504, with the Sixth and Eleventh Circuits expressly holding that vicarious liability is unavailable, and the Second, Third, Fourth, Fifth, Ninth, and Tenth Circuits holding (either expressly or by implication) that it is available. The Court should grant review to resolve this well-recognized, and ever-widening split.

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[8] In their supplemental brief, the Commonwealth Defendants specifically and repeatedly argued that vicarious liability was unavailable under Title II and Section 504, and specifically cited and discussed *Gebser*, *Jones*, and *Ingram*. C.A. Dkt. 81 at 3–4. But despite its eagerness to address arguments Montanez never raised, the Third Circuit's opinion failed to address this argument that the Commonwealth *did* raise. Indeed, the words "vicarious liability" do not appear in the Third Circuit's opinion, nor does any mention of *Gebser*, *Jones*, or *Ingram*. Instead, the Third Circuit—pointing only to *Marks*, *Armstrong*, and *Henrietta*—boldly proclaimed that its "sister circuits have consistently" come to the same conclusion on this issue. App. 27a.

III. IMPOSING VICARIOUS LIABILITY ON THE COMMONWEALTH IS INCONSISTENT WITH THIS COURT'S PRECEDENTS

As the Sixth and Eleventh Circuits reasoned, this Court's decision in *Gebser*—which held that vicarious liability is unavailable under Title IX—leads to the conclusion that vicarious liability is unavailable under Title VI, and thus unavailable under Title II and Section 504.

True, this Court has not formally extended *Gebser*'s holding to Title VI. But that extension is inescapable. After all, this Court in *Gebser* noted that Title IX and Title VI "operate in the same manner[by] conditioning an offer of federal funding on a promise by the recipient not to discriminate," and that "Congress [did not] contemplate[] unlimited recovery in damages against a funding recipient where the recipient is unaware of discrimination in its programs." 524 U.S. at 285–86. So *Gebser* necessarily forecloses vicarious liability under Title VI.[9]

This Court has not formally extended *Gebser*'s holding to Title II or Section 504, either. *See City & Cnty. of San Francisco, Calif. v. Sheehan*, 575 U.S. 600, 610 (2015).[10] But that extension, too, is inescapable. After

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[9] Indeed, even the Fifth and Ninth Circuits—which, as noted above, held that vicarious liability is available under Title II and Section 504—have recognized this. *See, e.g.*, *United States v. Cnty. of Maricopa, Arizona*, 889 F.3d 648, 652 (9th Cir. 2018); *Rodgers v. Smith*, 842 F. App'x 929 (5th Cir. 2021).

[10] Notably, in *Sheehan*, this Court "decline[d]" to resolve the vicarious-liability question "in the absence of adversarial briefing." 575 U.S. at 610.

all, Congress has clearly stated that the remedies under Title II and Section 504 mirror those available under Title VI. *See Barnes*, 536 U.S. at 185 (describing the remedies under the three statutes as "coextensive"). Because *Gebser* forecloses vicarious liability under Title VI, it likewise forecloses vicarious liability under Title II and Section 504.

The Third Circuit's holding to the contrary thus cannot be reconciled with *Gebser*. But, in addition to being inconsistent with *Gebser*, the Third Circuit's holding is also inconsistent with this Court's precedent dictating when private plaintiffs may recover for violations of federal regulations interpreting civil-rights statutes.

Federal regulations forbid a public entity from violating Title II and Section 504 "through contractual, licensing, or other arrangement." 28 C.F.R. § 35.130(b) (Title II); 28 C.F.R. § 42.503(b) (Section 504). The Third Circuit's decision—and the Second, Ninth, and Tenth Circuit decisions on which it relied—cited these regulations when holding that vicarious liability is available under Title II and Section 504. *See* App. 29a; *Marks*, 976 F.3d at 1096–97; *Armstrong*, 622 F.3d at 1065; *Henrietta D.*, 331 F.3d at 274. But *Alexander v. Sandoval*, 532 U.S. 275 (2001), makes it clear that such regulations cannot expand the scope of liability available under Title II and Section 504. Thus, these Circuits' reliance on them is impermissible.

In *Sandoval*, this Court explicitly held that private plaintiffs have no right to enforce Title VI regulations that attempt to outlaw anything other than intentional discrimination. 532 U.S at 285, 293; *cf. Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 173 (1994) ("[A] private plaintiff may not

bring a [suit based on a regulation] for acts not prohibited by the text of the [statute itself].”). Now, unlike *Gebser*, that decision did not turn on the fact that Title VI was passed under Congress’s Spending Clause power. Instead, it rested on this Court’s refusal to extend the bounds of Title VI’s judicially created cause of action. *See Sandoval*, 532 U.S. at 287 (“Having sworn off the habit of venturing beyond Congress’s intent, we will not accept respondents’ invitation to have one last drink.”); *see also Guardians Ass’n v. Civ. Serv. Comm’n of City of New York*, 463 U.S. 582 (1983) (holding that, because Title VI is enforceable only through a judicially created cause of action, a plaintiff may recover compensatory damages only if he or she shows intentional discrimination).[11] But this Court has already held that *Sandoval*’s reasoning applies to Title IX. *See Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 177–78 & n.2 (2005) (“[P]laintiffs may not assert claims under Title IX for conduct not prohibited by that statute.”) (citing *Cent. Bank of Denver*, 511 U.S. at 173). And this Court has also rejected the idea that any “analysis of [the remedies available under] Title VI does not carry over to [Title II] because the latter is not Spending Clause regulation[.]” *See Barnes*, 536 U.S. at 189 n.3.

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[11] Although the decision in *Guardians* was fractured, *Sandoval* acknowledged that “[i]n *Guardians*, the Court *held* that private individuals could not recover compensatory damages under Title VI except for intentional discrimination.” *Sandoval*, 532 U.S. at 282–83 (emphasis in original).

Sandoval's reasoning must also apply to Title II and Section 504 as well.[12] Again, Congress has clearly stated that the remedies under Title II and Section mirror those available under Title VI. And because private plaintiffs cannot recover compensatory damages for unintentional discrimination under Title VI, private plaintiffs cannot recover compensatory damages for unintentional discrimination under Title II or Section 504, either. *Cf. A.J.T. by & through A.T. v. Osseo Area Schs., Indep. Sch. Dist. No. 279*, 605 U.S. 335, 344–45 & n.4 (2025) (noting that "courts of appeals generally agree that a private plaintiff must show intentional discrimination"—i.e., "deliberate indifference"—to recover compensatory damages under Title II and Section 504 (citing *Gebser*, 524 U.S. at 290)).

But that is precisely what the Third Circuit's holding imposing vicarious liability on the Commonwealth will allow—i.e., automatic recovery against the Commonwealth for Title II and Section 504 violations committed by third-party contractors, even if the Commonwealth was completely ignorant of such violations. Because that holding rests on an interpretation of federal regulations that expand the scope of liability available under Title II and Section 504, it simply cannot be reconciled with *Sandoval* or *Jackson*. *Cf. also Gebser*, 524 U.S. at 285 (noting that "it would 'frustrate the purposes' of Title IX to permit a damages recovery . . . based on principles of *respondeat superior*, i.e., without actual notice").

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[12] Again, the Commonwealth Defendants raised this argument in their supplement brief. C.A. Dkt. 81 at 5 (citing *Sandoval*). But, again, the Third Circuit failed to address it or even acknowledge the existence of *Sandoval*.

Consequently, the Third Circuit's decision cannot be squared with a host of decisions from this Court, including *Guardians*, *Gebser*, *Sandoval*, and *Jackson*.

IV. THE VICARIOUS LIABILITY QUESTION IS IMPORTANT

With the stroke of a proverbial pen, the Third Circuit rendered the Commonwealth on the hook for each and every Title II and Section 504 violation committed by the employees and agents of every third party with whom it contracts to provide medical services within Commonwealth prisons. That erroneous decision will vastly expand the scope of liability under Title II and Section 504 for state and local governments and recipients of federal funding.

Importantly, the Third Circuit's holding is not limited to the Commonwealth as an entity. Title II, of course, applies to all state and local governments, and all instrumentalities of all state and local governments. *See* 42 U.S.C. § 12132 (noting that Title II applies to all "public entit[ies]"); 42 U.S.C. § 12131(1)(A) & (B) (defining "public entity").[13] And Section 504 applies to all recipients of federal funding, which includes numerous private entities like hospitals, universities, and nursing homes. *See* 29 U.S.C. § 794(a).

Further, while this case involved a third-party contractor providing medical care to inmates in state prisons, nothing about the Third Circuit's decision limits

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[13] Title II also applies to the National Railroad Passenger Corporation, and any "State, local, or regional entity established to provide, or make a contract providing for, commuter rail passenger transportation." *See* 42 U.S.C. § 12131(1)(C); 49 U.S.C. § 24102.

its application to that specific context. To the contrary, the Third Circuit made it clear that Title II and Section 504 permit vicarious liability for all violations committed by all contractors providing any programs, services, and activities. App. 28a (concluding that "Congress wanted to give people with disabilities an affirmative right to access *all* covered programs and services no matter *how* or *through whom* the government or federally funded entity elects to deliver them") (emphasis in original).

The consequences of this ruling cannot be overstated. Under it, a municipal court may be suddenly on the hook for money damages if a maintenance contractor neglects to sufficiently clear snow or ice off a wheelchair ramp. *Cf. Tennessee v. Lane*, 541 U.S. 509 (2004) (Title II guarantees access to courts). A university on the hook if its food-services contractor underestimates the demand for its gluten-free options. *See Cadena v. El Paso County*, 946 F.3d 717, 725 (5th Cir. 2020) (Title II and Section 504 guarantee access to "food"). And a nursing home on the hook if a laundry-services contractor inadvertently gives a patient the wrong pillow. *See Hall v. Higgins*, 77 F.4th 1171, 1181 (8th Cir. 2023) (Title II guarantees access to "beds").

Additionally, this ruling may vastly expand the scope of liability for violations of the United States Constitution. As noted above, under the Third Circuit's holding (and the holdings of Second, Ninth, and Tenth Circuits), public entities and federal-fund recipients have an "obligation" to ensure compliance with Title II and Section 504. Such entities and recipients thus have an incentive to direct, and create policies governing, the conduct of third-party contractors. But—at least for

municipal entities—doing so creates the risk of increased liability under Section 1983. *See Monell*, 436 U.S. at 690; *Pembaur*, 475 U.S. at 481. At a minimum, it forces municipal entities to query whether the benefits of increased oversight under Title II and Section 504 outweigh the risks of increased liability under Section 1983.

The correct interpretation of these federal statutes, then, is of significant, nationwide importance.

* * *

The Third Circuit's holding deepened a circuit split regarding the availability of vicarious liability under Title II and Section 504. It is also inconsistent with numerous decisions of this Court, including *Guardians*, *Gebser*, *Sandoval*, and *Jackson*. But because this error was unforced—i.e., a result of the Third Circuit's violation of the party-presentation principle—the solution is simple: A summary reversal of the Third Circuit's decision, and an order "remand[ing] the case for reconsideration shorn of the [derivative-liability issue] *** and bearing a fair resemblance to the case shaped by the parties." *Sineneng-Smith*, 570 U.S. at 380.

CONCLUSION

The Court should grant this petition for a writ of certiorari and summarily reverse the judgment of the court of appeals on the first question presented. Alternatively, it should grant the petition, exercise plenary review, and resolve the second question presented.

Respectfully submitted,

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