

No. 25-1073

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**

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

After the district court dismissed *pro se* inmate Jose Montanez’s disability discrimination claims against the Commonwealth of Pennsylvania, the Third Circuit reversed in part and remanded with instructions to permit him to amend his complaint. In so doing, it held that the Commonwealth has an “obligation to ensure compliance with Title II [of the Americans with Disabilities Act] and Section 504 [of the Rehabilitation Act] even when it contracts out the operation of [its] programs, services, or activities to third parties.” Pet. App. 27a.

The questions presented are:

1. Did the Third Circuit violate the party-presentation principle by asking the parties for clarification on Montanez’s theory of Commonwealth liability?
2. Did the Third Circuit err in holding that Montanez plausibly stated a claim under Title II and Section 504 against the Commonwealth based on his alleged exclusion from prison services by reason of his disability?

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INTRODUCTION

This case concerns inmate Jose Montanez's claims under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act against the Commonwealth of Pennsylvania. While in prison, Montanez became paralyzed from the chest down. He later was diagnosed with spinal stenosis and spinal cord edema. But before he received that diagnosis, he spent three days paralyzed and urine-soaked in his cell while medical staff ignored his pleas for help. Even after he was diagnosed, Montanez was repeatedly denied treatment and accommodations for his condition.

Montanez sought to vindicate his rights under Title II and Section 504 by bringing suit *pro se* in federal district court against the Commonwealth, the contractor it engaged to provide medical services in its prisons, and employees of both the Commonwealth and the contractor. But the district court dismissed that suit for failure to state a claim, and Montanez was denied leave to file a second amended complaint.

The Third Circuit correctly reversed parts of the district court's decision, holding that Montanez had indeed stated claims under Title II and Section 504 and determining that he should have been allowed to amend his complaint. As relevant here, the Third Circuit reached the uncontroversial conclusion that Montanez's claims against the Commonwealth were not foreclosed simply because the Commonwealth chose to contract away some of its care obligations to a third-party contractor. No circuit split is implicated by that decision. The case proceeds below on remand, and this petition should be denied.

STATEMENT

A. Legal background

1. The Rehabilitation Act of 1973 is a landmark civil rights law that prohibits discrimination on the basis of disability in programs that receive federal funding. It was enacted as part of a broader effort to “share with handicapped Americans the opportunities for an education, transportation, housing, health care, and jobs that other Americans take for granted.” *School Bd. of Nassau Cnty. v. Arline*, 480 U.S. 273, 277 (1987) (quoting 123 Cong. Rec. 13515 (1977)). The Act’s core provision, Section 504 (29 U.S.C. § 794), provides that “[n]o otherwise qualified individual with a disability” can be “excluded from the participation in,” or “denied the benefits of,” any federally funded program because of their disability. Section 504 was added to the Rehabilitation Act to “address[] the broader problem of discrimination against the handicapped” and was “patterned” after Title VI of the Civil Rights Act of 1964. *Arline*, 480 U.S. at 277.

2. The Americans with Disabilities Act of 1990 (ADA) serves a similar purpose but applies even more broadly: it prohibits discrimination against individuals with disabilities in employment, public services, and public accommodations. See 42 U.S.C. §§ 12101, 12102. Through the ADA, Congress enacted a “broad mandate” to accomplish its “sweeping purpose”: remedying “widespread discrimination against disabled individuals.” *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 674-675 (2001) (describing the ADA as “a milestone on the path to a more decent, tolerant, progressive society”); *Tennessee v. Lane*, 541 U.S. 509, 516 (2004) (“Invoking ‘the sweep of congressional authority,’ * * * the ADA is designed ‘to provide a clear and

comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” (quoting 42 U.S.C. §§ 12101(b)(1), (b)(4))).

Relevant here, Title II of the ADA guarantees that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. Title II applies to inmates in state prisons. *Pennsylvania Dep’t of Corr. v. Yeskey*, 524 U.S. 206, 209-210 (1998).

This Court has recognized that Title II creates enforceable rights and permits plaintiffs to seek damages, including against States in appropriate cases. See *A. J. T. by & through A. T. v. Osseo Area Schs., Indep. Sch. Dist. No. 279*, 605 U.S. 335, 339 (2025) (“Both Section 504 and Title II ‘authorize individuals to seek redress for violations of their substantive guarantees by bringing suits for injunctive relief or money damages.’” (quoting *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 160 (2017))); *United States v. Georgia*, 546 U.S. 151, 159 (2006).

3. Courts treat claims of discrimination under Section 504 and Title II similarly. *E.g.*, *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247, 275 (3d Cir. 2014) (“The substantive standards for determining liability under the Rehabilitation Act and the ADA are the same.”); *Sanchez v. Vilsack*, 695 F.3d 1174, 1177 n.2 (10th Cir. 2012) (same); *Ellis v. England*, 432 F.3d 1321, 1326 (11th Cir. 2005) (same); *Myers v. Hose*, 50 F.3d 278, 281 (4th Cir. 1995) (same). The “remedies, procedures, and rights” set forth in Section 505 of the Rehabilitation Act (29 U.S.C. § 794a) apply to

violations of Title II of the ADA. 42 U.S.C. § 12133. Section 505 in turn provides that the “remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964 * * * shall be available” for violations of Section 504. 29 U.S.C. § 794a(a)(2). Thus, both Title II and Section 504 “are enforceable through private causes of action,” with “remedies [that] are coextensive with the remedies available in a private cause of action brought under Title VI.” *Barnes v. Gorman*, 536 U.S. 181, 185 (2002).

B. Factual background

Jose Montanez was incarcerated in State Correctional Institution (SCI) Huntingdon, a prison operated by the Commonwealth of Pennsylvania, in August 2021 when he suddenly experienced paralysis from his chest down. Pet. App. 3a. He “crumbled to the floor” in his cell. D. Ct. Doc. 24, at ECF 4 (Jan. 27, 2023). He cried out for help to a correctional officer, who then fetched another officer. Pet. App. 3a-4a. Both officers watched as Montanez “drag[ged] his body over to the cell door from his bed” to speak with them. *Ibid.*; D. Ct. Doc. 24, at ECF 5. Petitioner Nurse Melanie Wagman took him to the medical unit, but laughed when he asked to be taken to the hospital and told him he would not be seen by a doctor until the next day. Pet. App. 4a.

The next day, Petitioner Dr. Rajinder Mahli came to examine Montanez. Pet. App. 4a. Montanez again was forced to drag himself across the floor of his cell to converse with Dr. Mahli. *Ibid.* He told Dr. Mahli that he could not walk and was involuntarily urinating on himself. *Ibid.*; D. Ct. Doc. 24, at ECF 6-7. Dr. Mahli did “nothing to help” Montanez. *Ibid.* Montanez

was left alone in his cell, unable to walk and drenched in his own urine, for three days. Pet. App. 4a.

Eventually, Montanez was taken to a hospital, where he was diagnosed with spinal cord stenosis and spinal cord edema. Pet. App. 4a-5a. He had surgery the next month. *Id.* at 5a. After surgery, he was transferred to a number of facilities: first to a private rehabilitation facility, then to SCI-Rockview, and finally back to SCI-Huntingdon. Pet. App. 4a-5a, 41a-42a. While incarcerated at SCI-Rockview, Montanez fell and herniated a disc in his back. *Id.* at 5a. He alleges that SCI-Rockview's Healthcare Administrator, Petitioner Richard Ellers, lied about the results of Montanez's x-ray, delaying his treatment and prolonging his suffering. *Ibid.*

Over the course of his many transfers, Montanez requested pain medication, reasonable accommodations such as a cane or crutches, and access to physical therapy. Pet. App. 5a. He also filed grievances complaining of the denial of services and reasonable accommodations. D. Ct. Doc. 24, at ECF 4, 7-8. Petitioners repeatedly denied his requests. *Ibid.*

C. Proceedings below

To vindicate his rights, Montanez, proceeding *pro se*, filed a Section 1983 suit in the Middle District of Pennsylvania asserting claims under the Eighth Amendment, Title II, and Section 504. Pet. App. 5a-6a. In his operative complaint,¹ he named the Commonwealth of Pennsylvania, several individual Commonwealth defendants (prison officials and Commonwealth employees), the private entity that the

¹ Montanez filed an initial complaint in August 2022 and an amended complaint in January 2023. Pet. App. 5a n.2.

Commonwealth contracts with to provide medical services in its prisons, and several employees of the contractor. *Id.* at 6a & nn.3-4. Local filing rules required Montanez to limit his statement of his substantial, multi-defendant claim to roughly three and a half pages. *Id.* at 7a. He complied with this requirement. *Ibid.*

The defendants moved to dismiss for failure to state a claim. Pet. App. 7a. The district court granted the defendants' motions and denied Montanez leave to amend. *Id.* at 7a-8a.

On appeal at the Third Circuit, Montanez gained representation. Resp. C.A. Br. His opening brief argued that the district court erred in dismissing his Title II, Section 504, and Eighth Amendment claims and in failing to allow Montanez to file an amended complaint. *Id.* at 9-10. On his Title II and Section 504 claims, he maintained that (1) he was excluded from access to prison services, and (2) that the defendants were "deliberately indifferent" to his disability-related needs. *Id.* at 11-20.

Before oral argument, the Third Circuit issued a letter stating that the parties should be prepared to discuss, among other topics, "[t]he extent to which the Commonwealth remains liable under Title II of the ADA and the Rehabilitation Act for the actions of private contractors providing medical services to inmates within state prisons." Pet. App. 37a-38a.

At oral argument, Montanez contended that the Commonwealth is liable for the prison medical contractor's doctors' denial of access to prison services, programs, and activities because "the State can't contract away its liability * * * for nondiscrimination against disabled people." 3d Cir. Tr. 8-9.

Petitioners’ attorney argued that if the panel were to determine that an amended complaint could be filed on remand, it should allow Montanez to potentially state an ADA claim against the Commonwealth, but not under a theory of vicarious liability. 3d Cir. Tr. 43-44.

The Third Circuit affirmed in part, reversed in part, and remanded with instructions that the district court grant Montanez leave to amend. Pet. App. 3a, 34a. As relevant here, it held that Montanez *had* stated claims for disability discrimination against the Commonwealth under Title II and Section 504. *Id.* at 25a. The court explained that “whether or not they use contractors, states remain responsible for ensuring that disabled prisoners can access their prisons’ services, programs, and activities on the same basis as non-disabled prisoners.” *Id.* at 30a. The Commonwealth was “obligated to ensure that [its prison medical contractor and the contractor’s employees]—like all other State contractors—comple[d] with federal laws prohibiting discrimination on the basis of disability.” *Id.* at 31a (quoting *Castle v. Eurofresh, Inc.*, 731 F.3d 901, 910 (9th Cir. 2013)). The Commonwealth did not seek rehearing or a stay to prevent the case from continuing in district court.

REASONS FOR DENYING THE PETITION

Petitioners’ request for summary reversal lacks merit—and there is no basis for plenary review.

I. PETITIONERS’ REQUEST FOR SUMMARY REVERSAL SHOULD BE REJECTED.

The Third Circuit did not insert any new claim or theory into this litigation. From the outset, Montanez has consistently asserted that the Commonwealth is

directly liable for the discrimination he suffered during his incarceration. Even after the Third Circuit raised the question of derivative liability, Montanez remained firm: he seeks to hold the Commonwealth *directly*—not *vicariously*—liable. Once the Third Circuit understood Montanez’s theory of the case, it accepted his framing. Its holding that he had stated a claim under Title II and Section 504 is best understood as embracing Montanez’s theory of direct liability. Petitioners’ assertion that vicarious liability was unlawfully “interject[ed]” (Pet. 3 (quoting *United States v. Sineneng-Smith*, 590 U.S. 371, 380 (2020))) is not consistent with the opinion the Third Circuit actually issued.

A. There is no error to correct.

1. Federal courts follow a principle of “party presentation.” *Sineneng-Smith*, 590 U.S. at 375. This principle circumscribes courts’ inherent power to “manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (quoting *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-631 (1962)). Because courts are “neutral arbiter[s] of matters the parties present,” they must allow the parties to “frame the issues for decision.” *Greenlaw v. United States*, 554 U.S. 237, 243 (2008).

The party-presentation principle does not, however, prevent courts from *clarifying* a party’s arguments. See *U.S. Nat’l Bank of Oregon v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 446 (1993) (explaining that courts have the “independent power to identify and apply the proper construction of governing law” (quoting *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991))). This Court has frequently sought

supplemental briefing, including “to clarify an issue or argument the parties raised” and “to determine whether the case could be resolved on a basis narrower than the question presented.” *Sineneng-Smith*, 590 U.S. at 381; see, e.g., *Babb v. Wilkie*, 589 U.S. 1164 (2020) (ordering supplemental briefing on an assertion made first at oral argument); *Carpenter v. Murphy*, 586 U.S. 1046 (2018) (ordering supplemental briefing on implications of parties’ statutory interpretations). This Court has also sought briefing on constitutional issues “implicated, but not directly presented” by the question on which it granted certiorari. *Sineneng-Smith*, 590 U.S. at 381.

In other words, courts are not “hidebound by the precise arguments of counsel” (*Sineneng-Smith*, 590 U.S. at 380), nor are they prohibited from clarifying arguments by requesting supplemental briefing or other relevant actions. See, e.g., *U.S. Nat’l Bank*, 508 U.S. at 448 (lower court’s request for supplemental briefing and consideration of arguments first addressed in that briefing was “certainly no abuse of its discretion”); see also *Sineneng-Smith*, 590 U.S. at 376 (“There are no doubt circumstances in which a modest initiating role for a court is appropriate.”).

To be sure, the party-presentation principle limits the power of courts to control the issues before them. Lower courts may not dismiss a party’s claim and “devise[] a new one” (*Clark v. Sweeney*, 607 U.S. 7, 9 (2025) (per curiam)), nor may they demote party counsel to “a secondary role” (*Sineneng-Smith*, 590 U.S. at 375). But this principle in no way prohibits a court from clarifying a party’s theory of the case.

2. The Third Circuit fully complied with the party-presentation principle. Montanez asserted from the

start that he seeks to hold the Commonwealth directly liable for the discrimination he experienced while incarcerated in its facilities. He clarified his theory of direct liability—which he was not able to fully expound upon in his page-limited *pro se* complaint—in his briefing on appeal. The Third Circuit accepted Montanez’s theory and held that he had stated a cognizable claim. Petitioners complain that the Third Circuit inserted a theory of vicarious liability into Montanez’s complaint. But they misread the court’s opinion. The vicarious-liability theory they dispute is not a part of the Third Circuit’s holding.

Start with the district-court litigation. Montanez consistently sought to hold the Commonwealth directly liable for the discrimination he experienced. In his operative *pro se* complaint, he named the Commonwealth as a defendant alongside the individual Commonwealth and medical contractor employees who denied him access to services. Pet. App. 6a nn.3-4. This made good sense because Montanez filed grievances about the conduct of those employees, thus putting the Commonwealth on notice of repeated disability discrimination at its facilities. See, e.g., D. Ct. Doc. 24, at ECF 2, 8 (Montanez filed a grievance regarding the discriminatory conduct of contractor employee Dr. Edwards and alleged that SCI-Smithfield Superintendent Wakefield nonetheless “allowed” the misconduct). The crux of Montanez’s claim against the Commonwealth is that he was subjected to a *pattern* of discrimination at various Commonwealth prison facilities over a period of months, a pattern the Commonwealth knew about, yet wholly ignored. See *id.* at ECF 8 (explaining that there was a “policy [at SCI-Huntingdon] of medical treatment being denied by medical

staff”); Cf. *Sineneng-Smith*, 590 U.S. at 375 (explaining that courts have “authority to recast *pro se* litigants’ motions to ‘avoid an unnecessary dismissal * * * or to create a better correspondence between the substance of a *pro se* motion’s claim and its underlying legal basis” (quoting *Castro v. United States*, 540 U.S. 375, 381-383 (2003))). Indeed, when the district court prematurely dismissed the Commonwealth as a defendant (D. Ct. Doc. 32, at 2), Montanez doubled down, arguing that the Commonwealth should “be included as a Defendant in this case” because it had “violated Section 504 * * * and Title II” (D. Ct. Doc. 38, at ECF 7).

On appeal, Montanez stayed consistent with his district-court arguments, premising his Title II and Section 504 claims against the Commonwealth on a pattern of discriminatory conduct involving multiple facilities and both Commonwealth and medical contractor employees. See Resp. C.A. Br. 11-18. He also clarified his theory of Commonwealth liability, applying the “deliberate indifference” standard that must be met to obtain damages under the ADA. *Id.* at 20. He explained that the Commonwealth was on notice of a pattern of discrimination because he had filed multiple grievances and appeals regarding violations by Commonwealth and medical contractor staff. *Id.* at 18-20. He analogized to *Furgess v. Pennsylvania Department of Corrections*, in which the Third Circuit held that the plaintiff plausibly alleged deliberate indifference because the Pennsylvania Department of Corrections “knew,” due to his multiple grievances, that he needed “an accessible shower facility,” yet failed to provide him with one. 933 F.3d 285, 292 (3d Cir. 2019). Relying on *Furgess*, Montanez argued that

the Commonwealth was directly liable because it was “aware of his needs for accommodations and disregarded them.” Resp. C.A. Br. 21.

Before oral argument, the Third Circuit sent the parties a letter requesting, among other things, that the parties be prepared to respond as to “[t]he extent to which the Commonwealth remains liable under Title II of the ADA and the Rehabilitation Act for the actions of private contractors providing medical services to inmates within state prisons.” Pet. App. 37a-38a.² The court’s question did not introduce any new theories or claims into the litigation. It merely sought “to clarify an issue * * * the parties raised.” *Sineneng-Smith*, 590 U.S. at 381. In response to this request, at oral argument Montanez explained that his Commonwealth claim incorporated the conduct of both Commonwealth and medical contractor employees because “the State can’t contract away its liability * * * for non-discrimination against disabled people.” 3d Cir. Tr. 8-9.

After oral argument, the court asked for supplemental briefing on the question it had posited to the parties before oral argument and allowed that the parties “may, but need not, address” the relevance of “federal regulations for determining the extent of the Commonwealth’s derivative liability under Title II of the ADA and the Rehabilitation Act.”³ Pet. App. 35a-

² A longstanding Third Circuit local rule codifies a procedure for notifying the parties of questions ahead of oral argument. 3d Cir. L.A.R. 34.1(c) & Committee comments.

³ Seeking supplemental briefing is a common and acceptable practice for both this Court and the lower courts. *Sineneng-Smith*, 590 U.S. at 381; *U.S. Nat’l Bank*, 508 U.S. at 445-446

36a. In response to this order, Montanez clarified that he was not asserting that the Commonwealth was vicariously liable for the conduct of the contractor's employees. He noted that "the Commonwealth focuses a substantial portion of its supplemental brief on vicarious liability," and emphasized that the issue was "beyond the scope of this court's order and one which was not raised in initial briefing":

Vicarious liability is simply not at issue here, because Mr. Montanez explained that he filed grievances about the discriminatory conduct of both Commonwealth and [medical contractor] employees. * * * State prison administrators were thus personally aware of the discriminatory conduct of their contractors and did not intervene, creating *direct* liability for ADA and [Rehabilitation Act] violations.

Resp. C.A. Supp. Br. 3 n.2.

The Third Circuit took Montanez at his word. Presumably accepting that he was not seeking to hold the Commonwealth vicariously liable for the conduct of the medical contractor employees, the court did not address vicarious or derivative liability anywhere in its discussion of Montanez's claims against the Commonwealth. See Pet. 18 n.8 (acknowledging as much). Instead, it presumably held that Montanez had plausibly alleged a claim of *direct* liability against the Commonwealth for the pattern of discrimination at its facilities because the Commonwealth has an

(approving of this practice for lower courts). A court can even seek supplemental briefing on arguments "made for the *first time* at oral argument." *Sineneng-Smith*, 590 U.S. at 381 (emphasis added).

“obligation to ensure compliance with Title II and Section 504 even when it contracts out the operation of [its] programs, services, or activities to third parties.” Pet. App. 27a. As this theory was raised and advanced by Montanez at every stage of litigation, the Third Circuit was well within the bounds of the party-presentation principle when it relied on this argument in its decision.

The procedural history of this case fits squarely within the process this Court has set out: the parties “advanc[ed] the facts and arguments entitling them to relief” (*Castro*, 540 U.S. at 386 (Scalia, J., concurring in part and concurring in judgment)), and the court served as a “neutral arbiter” of those arguments (*Sineneng-Smith*, 590 U.S. at 375 (quoting *Greenlaw*, 554 U.S. at 243)). The Third Circuit’s actions simply do not amount to the kind of “radical transformation” or “takeover of the appeal” that constitutes a violation of the party-presentation principle. *Sineneng-Smith*, 590 U.S. at 379-380.

3. Asserting otherwise, Petitioners compare the procedural history of this case to those of *Sineneng-Smith* and *Clark*, which, they argue, are “virtually indistinguishable.” Pet. 11. Petitioners are incorrect.

In *Sineneng-Smith*, the defendant argued that the law under which she was prosecuted was unconstitutionally vague and was a content-based restriction on speech in violation of the First Amendment. 590 U.S. at 377. The Ninth Circuit did not accept any of the defendant’s arguments, but still reversed all the defendant’s immigration-related convictions. *Id.* at 374-375. It did so by requesting briefs and extensive oral argument from outside advocacy groups on an alternative theory neither party had raised: overbreadth. *Ibid.*

The Ninth Circuit then found the law unconstitutionally overbroad. *Id.* at 375. This Court unanimously rejected the Ninth Circuit’s “radical transformation” of the defendant’s case (*id.* at 380), finding that it far exceeded the “modest” (*id.* at 376) and “neutral” (*id.* at 375 (quoting *Greenlaw*, 554 U.S. at 243) role courts should play in adjudicating disputes. This Court vacated and remanded for reconsideration “shorn of the overbreadth inquiry interjected by the appellate panel and bearing a fair resemblance to the case shaped by the parties.” *Id.* at 380.

The Ninth Circuit’s disposition of *Sineneng-Smith* is nothing like the Third Circuit’s here. To start with, Montanez, not the court of appeals, was the first to advance the theory that the Commonwealth is liable for the denial of services Montanez experienced. See Pet. App. 6a n.3. The Third Circuit also did not appoint *amici curiae* to advance an alternative legal theory in special briefing. Contra *Sineneng-Smith*, 590 U.S. at 378-379. It merely posed questions that the parties answered based on their own theories of the case.

This case is also easily distinguished from *Clark*. There, a state prisoner petitioned for a writ of habeas corpus arguing ineffective assistance of counsel. *Clark*, 607 U.S. at 8. The district court denied his claim. *Id.* at 9. On appeal, the Fourth Circuit held that the prisoner’s trial had been “marred by a combination of extraordinary failures from juror to judge to attorney” and reversed the district court’s denial of the prisoner’s petition on those alternative grounds. *Ibid.* (internal quotation marks omitted). Because the prisoner had petitioned for relief on an entirely different theory, this Court found that the Fourth Circuit’s

decision violated the party-presentation principle and remanded for proceedings consistent with his original claim. *Id.* at 10.

The Third Circuit did not ignore Montanez's claims or replace them with alternatives. It simply addressed the arguments and theories that he had made throughout litigation, and then accepted those theories in its decision. Pet. App. 27a. Its course of conduct was entirely fair and correct.

B. Summary reversal is inappropriate here.

Summary reversal is an “extraordinary” form of judicial relief. *Major League Baseball Players Ass’n v. Garvey*, 532 U.S. 504, 512-513 (2001) (Stevens, J., dissenting). In the context here, summary reversal should be used only in rare instances where courts flout the party-presentation principle by ignoring a party’s claim and “devis[ing] a new one” (*Clark*, 607 U.S. at 9), or when courts instigate a “takeover of the appeal” by effectively replacing a party with an outside advocacy group (*Sineneng-Smith*, 590 U.S. at 379). Because the Third Circuit did not “radical[ly] transform[.]” Montanez’s arguments in this case (*id.* at 380), the extreme remedy of summary reversal is inappropriate.

At best, Petitioners are asking for error correction of a fact-bound aspect of the Third Circuit’s holding: that Montanez’s admittedly bare-bones complaint sufficiently stated a claim that the Commonwealth is liable for the discrimination Montanez suffered (Pet. App. 27a). Setting aside the fact that the Third Circuit did not even *rule* on vicarious liability (see pp. 13-14, *supra*), this Court “is not,” in any event, “equipped to correct every perceived error coming from the lower federal courts.” *Tolan v. Cotton*, 572 U.S. 650, 659

(2014) (quoting *Boag v. MacDougall*, 454 U.S. 364, 366 (1982)).

Attempting to raise the stakes, Petitioners argue that the Third Circuit is a repeat party-presentation offender, suggesting that this Court should use this case to instruct the court of appeals as to its proper role. Pet. 13-14. But they offer no persuasive evidence on this account.

Petitioners first invoke dicta from a two-decade-old case stating that the court has discretionary power to address issues that have been “waived.” Pet. 13 (citing *Bagot v. Ashcroft*, 398 F.3d 252, 256 (3d Cir. 2005)). On Petitioners’ telling, this language indicates the Third Circuit’s willingness to contravene the choices of parties. *Ibid.* In reality, however, this is just imprecise terminology. Cf. *Hamer v. Neighborhood Hous. Servs. of Chicago*, 583 U.S. 17, 20 n.1 (2017) (“The terms waiver and forfeiture—though often used interchangeably by jurists and litigants—are not synonymous”). *Bagot* was considering an issue the plaintiff had forfeited, not waived (see *Bagot*, 398 F.3d at 256 (considering whether the plaintiff had “presented the argument with sufficient specificity to alert the district court” (quoting *Brennan v. Norton*, 350 F.3d 399, 418 (3d Cir. 2003))), and this Court has long recognized a discretionary power to consider forfeited issues. See *United States v. Olano*, 507 U.S. 725, 735 (1993). *Bagot* in no way suggests a tendency to violate the party-presentation principle.

Petitioners also point to two dissenting opinions citing *Sineneng-Smith* to suggest the Third Circuit has gone astray. Pet. 14 (citing *Hargrove v. Sleepy’s LLC*, 974 F.3d 467, 483 (3d Cir. 2020) (Hardiman, J., dissenting); *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), cert. denied, 144 S. Ct. 2688 (2024)). But party-presentation arguments are a common refrain in dissent: Such citations often appear in dissenting opinions from this Court⁴ and the courts of appeals.⁵ Far from suggesting that the Third Circuit uniquely disrespects the party-presentation principle, these dissents merely show that there can be room for disagreement among reasonable jurists over this “supple” principle. *Sineneng-Smith*, 590 U.S. at 376.

Finally, Petitioners’ request for summary reversal should be denied because the effect of the relief they seek on Montanez’s ongoing case is far from straightforward. If this Court summarily reversed with the instruction Petitioners seek, the impact on the ongoing litigation below would be entirely uncertain. *First*, it is far from clear that a summary reversal would remove the Commonwealth from this case because the

⁴ See, e.g., *Trump v. Illinois*, 146 S. Ct. 432, 437 (2025) (Alito, J., dissenting, joined by Thomas, J.) (“[T]he Court has unnecessarily and unwisely departed from [the party-presentation principle].”) (citing *Sineneng-Smith*, 590 U.S. at 375); *Edwards v. Vannoy*, 593 U.S. 255, 306-307 (2021) (Kagan, J., dissenting, joined by Breyer and Sotomayor, JJ.) (“This Court usually confines itself to the issues raised and briefed by the parties.”) (citing *Sineneng-Smith*, 590 U.S. at 375)).

⁵ See, e.g., *Moore v. Maryland*, 163 F.4th 828, 850 n.2 (4th Cir. 2026) (Niemeyer, J., dissenting); *Brown v. Arizona*, 82 F.4th 863, 899-900 (9th Cir. 2023) (en banc) (Nelson, J., dissenting), cert. denied, 144 S. Ct. 1346 (2024); *United States v. Campbell*, 26 F.4th 860, 917 n.16 (11th Cir. 2022) (en banc) (Newsom and Jordan, JJ., dissenting), cert. denied, 143 S. Ct. 95 (2022); *United States v. McReynolds*, 964 F.3d 555, 571-572 (6th Cir. 2020) (Griffin, J., dissenting in relevant part).

Third Circuit, on remand, could simply clarify that Montanez plausibly pleaded a claim of *direct* Commonwealth liability and that vicarious liability is not at issue. *Second*, even if the Third Circuit affirmed dismissal of the Commonwealth on remand, it is unclear what effect that would have in the ongoing litigation, given that Montanez has already filed a new operative complaint. See D. Ct. Doc. 70. Summary reversal here would raise more questions for the lower courts than it would answer.

II. THERE IS NO REASON TO GRANT CERTIORARI.

There is no circuit split because the Third Circuit did not rule on vicarious liability. It held only (and uncontroversially) that the Commonwealth may not evade its affirmative obligations under Title II or Section 504 by contracting out its public services. It did not address whether a plaintiff may sue under these statutes on a theory of pure vicarious liability. Indeed, it had no *need* to address this question because Montanez seeks to hold the Commonwealth directly—not vicariously—liable. See Resp. C.A. Supp. Br. 3 n.2.

A. The decision below is correct.

1. The Third Circuit correctly held that the Commonwealth has an “obligation to ensure compliance with [Title II and Section 504] even when it contracts out the operation of [its] programs, services, or activities to third parties.” Pet. App. 27a. The court rejected a reading of the statutes that would allow a State to “avoid complying with either statute and simultaneously insulate itself from liability simply by contracting out the operation of all its programs, services, and activities and burying its head in the sand.” *Id.* at 30a.

The Third Circuit’s statutory interpretation is obviously correct. Title II states: “[N]o 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. The statute’s broad language indicates that Congress intended this provision to apply to *all* “services, programs, or activities of a public entity,” regardless of whether they are administered in part through a third party. *Ibid.* Indeed, Title II’s purpose is “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” 42 U.S.C. § 12101(b)(1). It would be impossible to “eliminat[e] * * * discrimination” if public entities could contract around their liability. *Ibid.* Section 504 contains similarly expansive language, prohibiting discrimination on the basis of disability in the administration of “any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a).

The statutory background confirms the Third Circuit’s reading of Title II. Title III of the ADA explicitly bars entities from discriminating “directly, or through contractual, licensing, or other arrangements.” 42 U.S.C. § 12182(b)(1)(A)(i). This understanding naturally applies to Title II: all “forms of discrimination prohibited by” Title II are “identical to those set out in the applicable provisions of titles I and III.” H.R. Rep. No. 101-485, pt. 2, at 84 (1990). The House Judiciary Committee shared this understanding: “Title II should be read to incorporate provisions of titles I and III which are not inconsistent with the regulations implementing Section 504.” H.R. Rep. No. 101-485, pt. 3,

at 51 (1990). Those regulations, in turn, expressly provide that the law’s prohibition on discrimination applies to action taken “directly or through contractual or other arrangements.” 43 Fed. Reg. 1915, 2138 (Jan. 13, 1978).

The Department of Justice issued similar regulations interpreting Title II just one year after its enactment: “A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements [discriminate] on the basis of disability.” 56 Fed. Reg. 34141, 35718 (July 26, 1991). This language remains in the current regulations. See 28 C.F.R. § 35.130(b)(1). Specifically addressing the implementation of the ADA in jails and prisons, the regulation instructs that the Act “applies to public entities that are responsible for the operation or management of [correctional facilities], either directly or through contractual, licensing, or other arrangements with public or private entities.” 28 C.F.R. § 35.152(a).

2. Petitioners claim that “[t]he Third Circuit held that the Commonwealth * * * 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.” Pet. i. But as Petitioners themselves acknowledge, “the words ‘vicarious liability’ do not appear in the Third Circuit’s opinion.” *Id.* at 18 n.8. Indeed, as we have explained (pp. 13-14, *supra*), whether a public entity has vicarious liability for third party contractors—the only potential merits question presented by Petitioners—simply was not decided by the decision below. The relevant issue on appeal was whether Montanez sufficiently pleaded a Title II and Section 504 claim against the

Commonwealth, an issue which the Third Circuit resolved without reaching the question of vicarious liability. See pp. 13-14, *supra*. The Third Circuit's opinion is best read as vindicating Montanez's theory that the Commonwealth is *directly* liable for the discrimination he suffered at the hands of prison staff. See p. 13, *supra*. This case is therefore not an appropriate vehicle for the Court to address the question of vicarious liability.

As we have explained, the Third Circuit below held that the statutory text, legislative history, and DOJ regulations all indicate that “whether or not they use contractors, states remain responsible for ensuring that disabled prisoners can access their prisons’ services, programs, and activities on the same basis as non-disabled prisoners.” Pet. App. 30a. Petitioners claim that by requiring public entities and federal-funding recipients “to ensure compliance” with Title II and Section 504, the Third Circuit necessarily imposed vicarious liability. Pet. 18 (quoting Pet. App. 27a). Not so.

In support of their *sub silentio* vicarious-liability theory, Petitioners point to this Court's discussion of vicarious liability in the context of Section 1983 claims in *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986). Pet. 18. There, the Court explained that because the legislative history of Section 1983 demonstrated that Congress doubted its power to impose civil liability on municipalities “to oblige [them] to control the conduct of *others*,” the law “could not be interpreted to incorporate doctrines of vicarious liability.” *Pembauer*, 475 U.S. at 479. Petitioner presumes that “[obliging a party] to control the conduct of others’ imposes ‘vicarious liability’ on that party.” Pet. 18.

(quoting *Pembaur*, 475 U.S. at 479). But that is not necessarily, or always, so.

Pembaur, reiterating what the Court held in *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658 (1968), addressed whether a public entity could be held liable for the constitutional tort of an employee—that is, for the employee's own wrong, separate and apart from any fault on the part of the entity. *Pembaur*, 475 U.S. at 478 (citing *Monell*, 436 U.S. at 691). If the Court had allowed Section 1983 claims to proceed under a theory of vicarious liability, it would have imposed a *new* duty on a public entity: to ensure that its employees do not commit constitutional torts. The Constitution does not oblige state entities to control the actions of employees or other third parties.

By contrast, Title II and Section 504 *directly obligate* public entities and federal-funding recipients to ensure that disabled individuals do not face discrimination. Meeting that affirmative obligation requires controlling the conduct of third parties involved in the administration of their services, programs, and activities.⁶ Thus, although imposing a responsibility on an employer to ensure that its employees do not commit constitutional torts necessarily invokes vicarious liability, enforcing Title II and Section 504's affirmative obligation on the Commonwealth to ensure individuals in its care are not discriminated against on the basis of their disability does not. See Pet. App. 30a.

⁶ Although a state employee could be held individually liable for committing a constitutional tort, the same is not necessarily true for a state employee or third-party contractor who has discriminated on the basis of disability because the responsibility established by Title II rests with the public entity.

In short, even if vicarious liability is not available under Title II and Section 504,⁷ a public entity may still be *directly* liable for the discriminatory actions of its third-party contractor or that contractor’s employees. In *Gebser v. Lago Vista Independent School District*, the Court considered whether a student could recover damages from the school district under Title IX after a teacher sexually harassed her. 524 U.S. 274, 277 (1998). The Court found that the school district could be directly liable if “an official of the school district who at a minimum has authority to institute corrective measures on the district’s behalf has actual notice of, and is deliberately indifferent to, the teacher’s misconduct.” *Ibid.* *Gebser* highlights the important difference between direct and vicarious liability. If a student has notified a school district official “who at a minimum has authority to institute corrective measures on the district’s behalf,” that student may

⁷ This Court has not determined whether a plaintiff may recover based upon a theory of vicarious liability under Title II and Section 504, although multiple circuits have found vicarious liability available as a theory of recovery under these statutes. See, e.g., *Rosen v. Montgomery Cnty.*, 121 F.3d 154, 157 n.3 (4th Cir. 1997) (“Under the ADA and similar statutes, liability may be imposed on a principal for the statutory violations of its agent.”); *Duvall v. Cnty. of Kitsap*, 260 F.3d 1124, 1141 (9th Cir. 2001) (“When a plaintiff brings a direct suit under either the Rehabilitation Act or Title II of the ADA against a municipality * * *, the public entity is liable for the vicarious acts of its employees.”); *Delano-Pyle v. Victoria Cnty.*, 302 F.3d 567, 574-575 (5th Cir. 2002) (“[W]hen a plaintiff asserts a cause of action against an employer-municipality, under either the ADA or the [Rehabilitation Act], the public entity is liable for the vicarious acts of *any* of its employees as specifically provided by the ADA.”). The Sixth and Eleventh Circuits have reached the opposite conclusion. See pp. 28-30, *infra*.

be able to recover damages under Title IX. *Ibid.* Recovery becomes available because the school district, on those facts, is at fault.

3. This Court has used the Restatement of Agency as “a useful beginning point for a discussion of general agency principles.” *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 755 (1998). The Restatement explains the difference between direct and vicarious liability. A principal is “subject to direct liability” when “the agent acts with actual authority or the principal ratifies the agent’s conduct,” “the principal is negligent in selecting, supervising, or otherwise controlling the agent,” or “the principal delegates performance of a duty to use care to protect other persons or their property to an agent who fails to perform the duty.” Restatement (3d) Agency § 7.03. On the other hand, when “the agent is an employee who commits a tort while acting within the scope of employment” or “the agent commits a tort when acting with apparent authority in dealing with a third party on or purportedly on behalf of the principal,” the “principal is subject to vicarious liability.” *Ibid.*

Thus, even if Title II and Section 504 do not allow recovery on a theory of vicarious liability, a public entity or federal-funding recipient could be held *directly* liable for the actions of a contractor. For example, a public entity or federal-funding recipient may have “kn[own] or should have known about the conduct” of the contractor “and failed to stop it.” *Burlington Indus.*, 524 U.S. at 759. Or the public entity or federal-funding recipient may have contracted away the performance of a duty to an agent who fails to perform the duty. See Restatement (3d) Agency § 7.03. Vicarious liability need not be available under Title II and

Section 504 for Montanez to recover against the Commonwealth if the Commonwealth is *directly* liable for the harm he suffered.

The Third Circuit did not decide whether recovery for vicarious liability is available under Title II and Section 504 because *it did not need to*. All that the Third Circuit held is that contracting does not automatically immunize public entities and federal-funding recipients from Title II and Section 504 liability. See pp. 13-14, *supra*.

To be sure, recovery of damages under these statutes may require a showing of “deliberate indifference.” *S.H. ex rel. Durrell v. Lower Merion Sch. Dist.*, 729 F.3d 248, 262-264 (3d Cir. 2013); *Furgess*, 933 F.3d at 292. At most, Petitioners’ complaint is that the Third Circuit held Montanez stated plausible claims against the Commonwealth under Title II and Section 504 without identifying sufficient allegations showing that the Commonwealth was deliberately indifferent to Montanez’s exclusion from medical services. But this contention is both fact-bound and dubious. See pp. 10-11, 13, 16, *supra*.

B. No circuit split is implicated.

1. Every court of appeals that has addressed the question that the Third Circuit actually answered here has come to the same conclusion: Public entities and federal-funding recipients may be held liable for the discriminatory actions of third-party contractors under Title II and Section 504.

- In *Armstrong v. Schwarzenegger*, California contracted with counties to house state prisoners and parolees in county jails. 622 F.3d 1058, 1063-1064 (9th Cir. 2010). When the county

jails failed to accommodate disabled inmates, the Ninth Circuit was clear: “[A] State cannot avoid its obligations under federal law by contracting with a third party to perform its functions. The rights of individuals are not so ethereal nor so easily avoided.” *Id.* at 1074.

- In *Castle*, a former state prisoner sued Arizona and its Department of Corrections for the discriminatory actions of Eurofresh, a company that contracted with a state entity to utilize inmate labor. 731 F.3d at 903-904. The Ninth Circuit reaffirmed its *Armstrong* holding, stating that “Title II’s obligations apply to public entities regardless of how those entities chose to provide or operate their programs and benefits,” and public entities “may not contract away their obligation to comply with federal discrimination laws.” *Id.* at 910.
- In *Marks v. Colorado Department of Corrections*, a state inmate’s participation in a community corrections program operated by a contractor was terminated due to her worsening spinal stenosis. 976 F.3d 1087, 1092-1093 (10th Cir. 2020). The Tenth Circuit reasoned that “the community corrections program could be considered * * * a program of the [public entity defendants]” and that “the statutes and related regulations do not allow public or federally-funded entities to contract away their liability for discrimination.” *Id.* at 1096.
- In *Henrietta D. v. Bloomberg*, a group of indigent New York City residents with AIDS and other HIV-related illnesses sued the Commissioner of the New York State Department of

Social Services (referred to as the “state defendant”), among other defendants, for the failure of New York City’s Division of AIDS Services and Income Support to “provide them with adequate access to public benefits.” 331 F.3d 261, 264 (2d Cir. 2003). The Second Circuit held that “the state defendant was subject to suit under the ADA * * * and possessed of an obligation to supervise the effective delivery of benefits.” *Id.* at 265.

None of these courts found vicarious liability available as a theory of recovery under Title II or Section 504. Rather, they focused on the importance of holding public entities accountable even when they employ third-party contractors. The Third Circuit’s holding is entirely consistent with these decisions.

2. Petitioners observe (at 15-17) that two circuits have held that an employer may not be vicariously liable for the discriminatory actions of an employee under Title II and Section 504. But these cases do not conflict with the Third Circuit’s holding. Both the Sixth Circuit in *Jones v. City of Detroit, Michigan* and the Eleventh Circuit in *Ingram v. Kubik* addressed circumstances in which the alleged misconduct occurred exclusively at the level of the employee, such that the public entity defendants could not be directly liable for discrimination.

In *Jones*, the plaintiff sued the City of Detroit for its police officers’ failure to provide reasonable accommodations during his arrest. 20 F.4th 1117, 1118 (6th Cir. 2021). The Sixth Circuit certified an interlocutory appeal limited to the question whether Title II and Section 504 “permits a claim of vicarious liability, the theory under which [plaintiff] sued the City.” *Id.* at

1119. The Sixth Circuit looked to *Gebser* for guidance because Title IX (addressed in *Gebser*) “uses the same remedial scheme” as Title VI, whose remedial scheme Title II and Section 504 incorporate. *Id.* at 1120. The Sixth Circuit reasoned that “[i]f Title VI does not allow vicarious liability, neither do [Title II or Section 504].” *Id.* at 1121. *Jones* thus dealt *explicitly* with the issue of vicarious liability—the only theory the plaintiff there pursued. Here, by contrast, Montanez pursued a theory of direct liability, which the Third Circuit accepted. See pp. 13-14, *supra*.

The Eleventh Circuit adopted this same reasoning in *Ingram*, in which the plaintiff sued the supervisor of a sheriff’s deputy because the deputy allegedly violated Title II. 30 F.4th 1241, 1257 (11th Cir. 2022) (holding that vicarious liability is unavailable under Title II and Section 504). But *Ingram* is also readily distinguishable. There, the plaintiff sought to “evade” the district court’s conclusion that the plaintiff failed to allege that the supervisor had any actual knowledge of the discrimination and therefore was not deliberately indifferent by “arguing that [the supervisor was] vicariously liable.” *Ibid.* But here, Montanez *did* allege that the Commonwealth was deliberately indifferent—it knew about the discrimination from Montanez’s many grievances and appeals yet failed to act. See Resp. C.A. Br. 18-20 (explaining that the Commonwealth knew about the discrimination Montanez was experiencing because he had filed grievances and appeals). Montanez never relied on a theory of vicarious liability, and the Third Circuit never *ruled* on vicarious liability.

Thus, in both *Jones* and *Ingram*, the plaintiff sought to hold an employer liable based *solely* on its

relationship to an employee who was personally responsible for discriminatory misconduct. Direct liability was not a possibility in either case because the employer was not alleged to have been on notice of the discrimination, much less deliberately indifferent.

Because the Third Circuit's decision below is most fairly read as approving Montanez's theory of *direct* liability, not the unbriefed and unargued theory of *vicarious* liability (pp. 13-14, *supra*), the decision below is not in conflict with *Jones* or *Ingram*.

C. Review is otherwise unwarranted.

The Third Circuit's decision stands only for the basic proposition that public entities may not avoid their duties under Title II and Section 504 by contracting with a third party to provide their public services. That settled principle does not warrant review.

Third-party contracting for prison medical services is widespread. Approximately half of the States engage third party contractors for such services. See Kil Huh et al., *State Prisons and the Delivery of Hospital Care*, The Pew Charitable Trusts 4-5 (July 2018). A majority of States also place prisoners in the custody of private prisons or contracted local jails, where *all* correctional functions are performed by a contractor. *Id.* at 6.

Because of the prevalence of private prisons and private medical providers, "if states could evade their statutory duties merely by outsourcing the operation of such programs, Title II and Section 504 would become dead letter within state prisons." Pet. App. 30a. Title II should not be interpreted so as to leave corrections departments only symbolically liable for their

contractors' denial of services on the basis of disability.

Protecting individuals with disabilities is of particular importance in state prisons, where an estimated 40% of inmates have a disability. Prison Policy Initiative, *Disability*, perma.cc/KL2X-4VBP. The Department of Justice has explained that “[i]f the detention and correctional facilities fail to accommodate prisoners with disabilities, these individuals have little recourse.” 28 C.F.R. Pt. 35, App. A, Title II Regulations 2010 Guidance and Section-by-Section Analysis. Inmates with disabilities are unable to seek alternative healthcare providers. Accordingly, Title II must apply to public entities even when they contract out prison operations because “[t]he power to incarcerate citizens rests with the state, not a private entity.” 73 Fed. Reg. 34466, 34495 (June 17, 2008).

CONCLUSION

The Court should deny the petition.

Respectfully submitted.

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