No. 25-1356

In the

Supreme Court of the United States

WALTER A. BERNARD,
Petitioner,

v.

PHILIP A. IGNELZI, Individually and as Judge, Court of Common Pleas, Allegheny County, Pennsylvania,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR REHEARING

BRUCE FEIN
Counsel of Record
LAW OFFICES OF BRUCE FEIN
300 New Jersey Avenue NW, Suite 300
Washington, DC 20001
(202) 465-8727
bruce@feinpoints.com

Counsel for Petitioner

LEGAL PRINTERS LLC ● Washington, DC ● 202-747-2400 ● legalprinters.com

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES....ii

INTRODUCTION....1

REASONS FOR GRANTING REHEARING....3

I. *Till* and *Rockett II* Are Intervening Appellate Authority on the Question the Third Circuit Declined to Reach....3

II. Respondent's May 3 Nonjudicial, Orchestrated Police Seizure of Petitioner Was Adequately Presented Below but Wrongly Deemed Forfeited by the Third Circuit....5

A. The Record....5

B. Preservation....6

III. The Court Should Grant, Vacate, and Remand, or in the Alternative Hold This Petition....7

CONCLUSION....9

CERTIFICATE OF COUNSEL....11

TABLE OF AUTHORITIES

Page(s)

CASES

Antoine v. Byers & Anderson, Inc., 508 U.S. 429 (1993).....8

Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist., 877 F.3d 136 (3d Cir. 2017).....7–9

Burns v. Reed, 500 U.S. 478 (1991).....8

Cutter v. Wilkinson, 544 U.S. 709 (2005).....8

Forrester v. White, 484 U.S. 219 (1988).....6, 8

Gibson v. Goldston, 85 F.4th 218 (4th Cir. 2023).....3, 6, 7

Lawrence v. Chater, 516 U.S. 163 (1996).....7

Lebron v. National R.R. Passenger Corp., 513 U.S. 374 (1995).....6

Lo-Ji Sales, Inc. v. New York, 442 U.S. 319 (1979).....6

Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).....9

McCoy v. Alamu, 141 S. Ct. 1364 (2021).....9

Mireles v. Waco, 502 U.S. 9 (1991).....3, 7, 8

Rockett ex rel. K.R. v. Eighmy, 71 F.4th 665 (8th Cir. 2023).....3, 4, 7

Rockett ex rel. K.R. v. Eighmy, No. 25-1664 (8th Cir. Oct. 13, 2026) (*Rockett II*).....1–5, 8, 10

Stump v. Sparkman, 435 U.S. 349 (1978).....3

Taylor v. Riojas, 592 U.S. 7 (2020).....9

Till v. King, Nos. 25-1558/1614 (6th Cir. Aug. 21, 2026).....1–5, 7–10
Tolan v. Cotton, 572 U.S. 650 (2014).....9
Yee v. City of Escondido, 503 U.S. 519 (1992).....6

RULES

Sup. Ct. R. 13.....8
Sup. Ct. R. 15.8.....2
Sup. Ct. R. 44.2.....1, 11

INTRODUCTION

Pursuant to Rule 44.2, Petitioner Walter A. Bernard respectfully petitions for rehearing of the Court's October 5, 2026 order denying certiorari. Two published appellate decisions post-dating the petition bear directly on the predicate for the Third Circuit's refusal to consider Petitioner's challenge to absolute judicial immunity for an alleged unconstitutional home seizure orchestrated and supervised by Respondent.

On August 21, 2026, after Petitioner filed for certiorari on May 13, 2026, the Sixth Circuit decided *Till v. King*, Nos. 25-1558/1614 (6th Cir. Aug. 21, 2026), denying judicial immunity for the detention of a teenager outside the judicial process. The Sixth Circuit reached the absolute immunity issue notwithstanding an asserted forfeiture.

On October 13, 2026, eight days after this Court denied certiorari, the Eighth Circuit decided *Rockett ex rel. K.R. v. Eighmy*, No. 25-1664 (8th Cir. Oct. 13, 2026) (*Rockett II*), holding that a judge who personally directs officers to detain effects a Fourth Amendment seizure; and that the detention at issue was unreasonable without a court order, probable cause, or exigent circumstances. Although *Rockett II* did not revisit absolute judicial immunity, both decisions reinforce the significance of the functional-immunity question the Third Circuit declined to address.

The Third Circuit held that Petitioner forfeited the argument that Respondent acted as a law-enforcement officer, not a judge, in directing the Petitioner's first arrest. Pet. App. 7a n.9. But the

Second Amended Complaint alleged that the judge "direct[ed] law enforcement to arrest and incarcerate" Petitioner, and it described the judge's conduct as "non-judicial acts" that are "not a judicial act normally performed by a judicial officer." Second Am. Compl. ¶¶ 29, 50, 106 (C.A. App. 22, 25, 35). Respondent distinguished the Fourth and Eighth Circuit decisions below on the ground that those judges acted personally rather than "ordering someone else to do so." Resp. C.A. Br. 12. *Rockett II* has now rejected that distinction for drawing the line between judicial and non-judicial acts.

Counsel acknowledges that *Till* issued while the petition was pending and could have been presented by supplemental brief under Rule 15.8; none was filed. *Rockett II,* however, post-dated the denial of certiorari. Petitioner does not suggest the omission of *Till* is itself a ground for rehearing.

Petitioner seeks a limited disposition: rehearing and an order granting the petition, vacating the judgment, and remanding for the Third Circuit to decide the nonjudicial-function question in light of *Till* and *Rockett II*, with no merits briefing or argument in this Court. Alternatively, he asks that the Court hold this petition pending any timely petition for certiorari in *Till* or *Rockett II* and, at a minimum, that the Court call for a response.

REASONS FOR GRANTING REHEARING

I. *Till* and *Rockett II* Are Intervening Appellate Authority on the Question the Third Circuit Declined to Reach

The petition identified decisions of the Fourth, Fifth, Sixth, and Eighth Circuits withholding absolute immunity from judges who step outside the judicial function to direct or carry out a seizure. Petitioner does not contend that *Till* or *Rockett II* by itself creates a new conflict. But they show how the inquiry the Third Circuit declined to undertake should be conducted on facts first cousin to Petitioner's case.

In *Till*, a Michigan judge, offended by a teenager's snoozing during a program conducted in his courtroom, had her handcuffed, dressed in a jail jumpsuit, held in a cell for hours, and subjected to a streamed "mock trial." The Sixth Circuit affirmed the denial of absolute immunity. Applying *Stump v. Sparkman*, 435 U.S. 349, 362 (1978), and *Mireles v. Waco*, 502 U.S. 9, 11 (1991), it asked whether the act furthered an official act or sanction, and treated the absence of any order, case number, or record as evidence that it did not. *Till*, slip op. 6–7. It found the Eighth Circuit's reasoning in *Rockett*, 71 F.4th 665 (8th Cir. 2023), persuasive and relied on *Gibson v. Goldston*, 85 F.4th 218 (4th Cir. 2023). It kept the two exceptions to immunity distinct: the jurisdiction exception presupposes a judicial act, while the function exception asks whether the act was judicial at all. *Id.* at 10–11. And it reached the immunity question despite an asserted forfeiture, because the

law and facts were before the court and there was no unfair surprise. *Id.* at 5.

In *Rockett II*, after the Eighth Circuit's 2023 ruling denying absolute immunity, a jury found the Missouri judge liable for locking two children in holding cells. The Eighth Circuit affirmed. It held that by ordering an officer to "lock them up," the judge seized the children himself, and that it "makes no difference" that someone else closed the doors. *Rockett II*, slip op. 6–7. It held the seizure unreasonable because there was no court order, probable cause, or exigency, and concluded that "[a] reasonable judge should have known better." *Id.* at 7–9. *Rockett II* did not revisit absolute immunity, which the judge had not preserved. *Id.* at 4–5. But the Third Circuit's only basis for treating Petitioner's May 3 arrest as judicial was that the April 27 order "authorized" it. Pet. App. 6a n.8. *Rockett II* addresses precisely whether a judge's direction to seize someone, with no adjudicated order as a predicate, is the execution of a judicial order or the judge's own seizure. Respondent distinguished *Rockett* below because the judge there "personally escorted children to jail rather than ordering someone else to do so." Resp. C.A. Br. 12. *Rockett II* forecloses that defense, at least for Fourth Amendment purposes: a judge who orders an officer to detain someone has seized that person himself.

The Third Circuit never applied this test. It asked only whether the judge had power to manage the matter, a jurisdiction question, and declared the functional question forfeited. Pet. App. 7a n.9, 8a. Its unpublished disposition binds no one; *Till* binds the

federal courts of four States. The question presented has never been decided in Petitioner's case.

Substantial effect. Together the decisions go to both premises of the judgment below. *Till* shows that forfeiture need not foreclose arguing a pleaded immunity question, and that a jurisdiction holding does not answer the function question. *Rockett II* goes to the authorization premise of footnote 8: whether a seizure directed by a judge unmoored to any adjudicated order is the execution of a judicial order at all, and it removes the only ground on which Respondent distinguished the decisions on which the petition relied. Neither premise has been tested against these decisions.

II. Respondent's May 3 Nonjudicial, Orchestrated Police Seizure of Petitioner Was Adequately Presented Below but Wrongly Deemed Forfeited by the Third Circuit

A. The Record. The April 27 order threatened but did not adjudicate contempt. C.A. App. 100. The question is what it actually authorized. No contempt hearing, finding, or warrant preceded May 3. The contempt order is dated May 16 and, the complaint alleges, was filed June 5, backdated, without a hearing. Second Am. Compl. ¶¶ 110–12 (C.A. App. 35). Petitioner received no notice of any hearing before he was seized. *Id.* ¶¶ 175, 200, 208.

The complaint alleges that deputies surrounded Petitioner's home for about an hour without a warrant, threatened to break in, and told him only

that the judge "just wanted to see" him; that the judge directed the arrest; and that in court the judge confirmed his discussions with the Sheriff's Office about approving a break-in order. *Id.* ¶¶ 25, 29, 86–91, 98 (C.A. App. 21–22, 31–33). Respondent's own filing states that the judge "ordered that Plaintiff Walter Bernard be brought to his courtroom." C.A. App. 86 (ECF No. 26 ¶ 3). Unlike the judge in *Gibson*, Respondent is not alleged to have gone to the home. But a judge deciding whether deputies may break into a litigant's home is directing the manner of a police operation, not adjudicating a case. Here, Respondent, in authorizing deputies to break into Petitioner's home, acted as "an adjunct law enforcement officer." *Lo-Ji Sales, Inc. v. New York*, 442 U.S. 319, 327 (1979); *see Forrester v. White*, 484 U.S. 219, 227–29 (1988).

B. Preservation. The complaint pleaded both the facts and their nonjudicial character. Second Am. Compl. ¶¶ 29, 50, 106, 184 (C.A. App. 22, 25, 35, 46). Once a federal claim is properly presented, a party may make any argument in support of it. *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992); *Lebron v. National R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995).

Petitioner acknowledges that the opposition to dismissal developed appellate divestiture rather than the functional test for absolute immunity, and that the District Court read it that way. ECF No. 55 at 5–7; Pet. App. 15a. But the opposition disputed individual-capacity immunity across the board, alleged that Respondent supervised the arrest and directed the

detention, and conceded nothing about the judicial character of those acts. ECF No. 55 at 2–5.

Even if the nonjudicial acts argument was not preserved, forfeiture need not end the inquiry. *Till* reached a judicial-immunity argument notwithstanding forfeiture. Slip op. 5. The procedural postures differ: *Till* involved thin appellate briefing, this case a theory not developed in the District Court. But the Third Circuit itself may reach an unpreserved issue in exceptional circumstances, and has considered an unpreserved immunity contention where the opponent was not unfairly surprised. *Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist.* 877 F.3d 136, 146–49 (3d Cir. 2017). Respondent was not surprised here: he answered the argument on the merits below, invoking *Mireles* and distinguishing *Gibson* and *Rockett*. Resp. C.A. Br. 12.

III. The Court Should Grant, Vacate, and Remand, or in the Alternative Hold This Petition

The Court need not decide whether Respondent ultimately enjoys absolute immunity. A grant, vacatur, and remand is appropriate where an intervening development reveals a reasonable probability that the decision below rests on a premise the lower court would reject on further consideration, and where redetermination may determine the outcome. *Lawrence v. Chater*, 516 U.S. 163, 167–68 (1996) (per curiam). The premise here is that the briefing omission foreclosed any consideration of the functional exception despite the complaint's express

allegations and reasonable inferences. *Till*, *Rockett II*, and *Barna* create a reasonable probability the Third Circuit would reconsider that premise, and a ruling on the functional exception, unlike the jurisdiction holding, could be outcome determinative. This Court is "a court of review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005). Petitioner acknowledges that Respondent may still prevail under *Mireles* and that his *Younger* defense remains unresolved. Pet. App. 8a n.11. A remand would compel no discovery and award nothing; it would let the court below decide the question it declined to confront.

In the alternative, the Court should hold this petition. Both *Till* and *Rockett II* arise from appeals by sitting judges. Judge King's time to seek certiorari has not expired, and Judge Eighmy's presumptive deadline is January 11, 2027. Sup. Ct. R. 13. A decision in either case would bear directly on this one. Petitioner recognizes that no petition has yet been identified and that review is not assured.

The question also warrants this Court's attention because absolute immunity is the exception, not the rule. This Court has been "quite sparing" in recognizing it, and the official who claims it bears "the burden of showing that such an exemption is justified by overriding considerations of public policy." *Forrester*, 484 U.S. at 224; *see Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 432 (1993); *Burns v. Reed*, 500 U.S. 478, 486–87 (1991). Each grant of absolute immunity extinguishes the remedy for a constitutional injury. As Chief Justice Marshall wrote:

> The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. . . . The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.

Marbury v. Madison, 5 U.S. (1 Cranch) 137, 163 (1803). An immunity wrongly extended is therefore as consequential as one wrongly withheld, and this Court has corrected both. *See Tolan v. Cotton*, 572 U.S. 650 (2014) (per curiam); *Taylor v. Riojas*, 592 U.S. 7 (2020) (per curiam); *McCoy v. Alamu*, 141 S. Ct. 1364 (2021) (granting, vacating, and remanding in light of *Taylor*). Here absolute immunity was bestowed without the decisive question, whether the challenged act was judicial at all, ever being answered, by means of a forfeiture rule the Third Circuit's own precedent does not require. *Barna*, 877 F.3d at 146–49. Applied that way against Petitioner, forfeiture shifts the burden of proof from the official claiming immunity to the person injured.

CONCLUSION

The Court should grant rehearing, vacate its October 5, 2026 order denying certiorari, and grant the petition, vacate the Third Circuit's judgment, and remand for further consideration in light of *Till* and

Rockett II. Alternatively, the Court should hold this petition pending disposition of any petition for certiorari in *Till v. King*, Nos. 25-1558/1614 (6th Cir.), or *Rockett ex rel. K.R. v. Eighmy*, No. 25-1664 (8th Cir.). At a minimum, the Court should call for a response before disposing of this petition.

Respectfully submitted,

Bruce Fein

BRUCE FEIN
Counsel of Record
LAW OFFICES OF BRUCE FEIN
300 New Jersey Avenue NW, Suite 300
Washington, DC 20001
(202) 465-8727
bruce@feinpoints.com

Counsel for Petitioner

October 27, 2026

CERTIFICATE OF COUNSEL

As counsel of record for Petitioner, I certify that this petition for rehearing is restricted to the grounds specified in Rule 44.2, namely intervening circumstances of a substantial or controlling effect or other substantial grounds not previously presented, and that it is presented in good faith and not for delay.



BRUCE FEIN
Counsel of Record

Dated: October 27, 2026