

IN THE SUPREME COURT OF THE UNITED STATES

No. ___A-___

COMMONWEALTH OF PENNSYLVANIA, PAULA PRICE,
NURSE MEL, RICHARD ELLERS, MARY PATTON, C.
WAKEFIELD, N. DAVIS, AND JOHN RIVELLO,

Applicants-Petitioners

v.

JOSE MONTANEZ, *et al.*

APPLICATION FOR EXTENSION OF TIME TO FILE A
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

To the Honorable Samuel A. Alito, Jr., as Circuit Justice for the United States
Court of Appeals for the Third Circuit:

Pursuant to Rules 13.5 and 30.2 of the Rules of this Court, the Pennsylvania
Office of Attorney General—on behalf of Applicants-Petitioners Paula Price, Nurse
Mel, Richard Ellers, Mary Patton, C. Wakefield, N. Davis, John Rivello, and the
Commonwealth of Pennsylvania (Defendants-Appellees below; collectively, the
“Commonwealth Defendants”)—respectfully requests a 30-day extension of time, to
and including Thursday, February 5, 2026, within which to file a petition for a writ
of certiorari to review the judgment of the United States Court of Appeals for the
Third Circuit in the above-captioned case. The underlying panel opinion, App., *infra*,

001a–037a, is reported at 154 F.4th 127 (3d Cir. 2025). The District Court’s memorandum, App., *infra*, 043a–069a, is not reported.

The Court of Appeals entered judgment on October 8, 2025. So, unless extended, the current deadline to file a petition for a writ of certiorari is January 6, 2026. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. Respondent Jose Montanez allegedly suffered a medical episode while incarcerated in a Pennsylvania prison. He subsequently filed a lawsuit on his own behalf against the Commonwealth of Pennsylvania, several Commonwealth employees, a private company engaged by the Commonwealth to provide medical care to Commonwealth inmates, and several employees of that private company. His complaint contained, *inter alia*, claims under Title II of the Americans with Disabilities Act (“ADA”) and Section 504 of the Rehabilitation Act (“RA”).

2. The Commonwealth Defendants moved to dismiss that complaint in its entirety for failing to state a claim upon which relief could be granted. The District Court granted that motion and dismissed all of Montanez’s claims with prejudice.

3. Montanez appealed that dismissal on his own behalf to the Third Circuit. But he subsequently obtained pro bono counsel, who filed the Opening Brief and Reply Brief on his behalf.

4. The Third Circuit then set the matter down for oral argument. Five days before that argument, 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 [of Pennsylvania] remains liable under [the ADA and RA]

for the actions of private contractors providing medical services to inmates within state prisons.” App., *infra*, 071a–072a.

5. Neither Montanez nor his pro bono counsel had ever previously argued that the Commonwealth could or should be liable for ADA or RA violations committed by its medical contractors. Nevertheless—and not surprisingly in light of the Third Circuit’s letter—his pro bono counsel raised that argument in the first few seconds of her oral argument before the Third Circuit.

6. After oral argument, the Third Circuit ordered the parties to submit supplemental briefs addressing, *inter alia*, “[w]hether the Commonwealth is liable for violations of the [ADA or RA] caused by private contractors providing medical services to inmates within state prisons.” App., *infra*, 073a.

7. In their supplemental brief, the Commonwealth Defendants first argued that the Third Circuit had *sua sponte* “interjected” the vicarious-liability issue into the case in violation of *United States v. Sineneng-Smith*, 590 U.S. 371, 380 (2020). App., *infra*, 076a–078a. The Commonwealth Defendants also argued that holding the Commonwealth vicariously liable for ADA or RA violations committed by its medical contractors would violate the principle announced in *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286 (1998), and applied to the ADA and RA by the Sixth Circuit in *Jones v. City of Detroit, Michigan*, 20 F.4th 1117, 1121 (6th Cir. 2021), and by the Eleventh Circuit in *Ingram v. Kubik*, 30 F.4th 1241, 1258–59 (11th Cir. 2022). App., *infra*, 078a–080a.

8. The Third Circuit later issued a precedential opinion reversing the District Court's dismissal of Montanez's claims. Along the way, that opinion held that the Commonwealth in fact could be liable for ADA and RA violations committed by its medical contractors. But the opinion did not address the Commonwealth Defendants' argument under *Sineneng-Smith*, nor its argument under *Gebser, Jones*, and *Ingram*.

9. The Commonwealth Defendants believe this case warrants review by this Court on a writ of certiorari because the Third Circuit has, *inter alia*, so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power; entered a decision in conflict with decisions of other United States courts of appeals on the same important matter; and decided an important question of federal law that conflicts with relevant decisions of this Court.

10. However, undersigned counsel has other pressing deadlines and responsibilities that overlap with the timeframe for seeking certiorari, which also overlaps with numerous end-of-year holidays. An extension is thus necessary to afford counsel sufficient time to prepare a petition that can effectively aid the Court in its consideration of this matter. And the requested 30-day extension will not significantly affect this Court's calendar.

Accordingly, the Commonwealth respectfully requests that the time for filing a petition for a writ of certiorari be extended by 30 days, up to and including February 5, 2026.

DAVID W. SUNDAY, JR.
Attorney General

Office of Attorney General
1251 Waterfront Place, Mezzanine Level
Pittsburgh, PA 15222
Phone: (412) 235-9067
dmullen@attorneygeneral.gov

By: /s/ Daniel B. Mullen
DANIEL B. MULLEN
Chief Deputy Attorney General
Chief, Appellate Litigation Section
Counsel of Record

DATE: December 9, 2025