

IN THE SUPREME COURT OF THE UNITED STATES

No. 25A688

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

Applicants-Petitioners

v.

JOSE MONTANEZ, *et al.*

**APPLICATION FOR A FURTHER 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, and for good cause, 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 an additional 30-day extension of time, to and including Monday, March 9, 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. The original deadline to file a petition for a writ of certiorari was January 6, 2026. This Court previously extended that deadline to February 5, 2026. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. As explained in the previous Application, 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. Although undersigned counsel has been working diligently to prepare the petition in this case, undersigned counsel has other pressing deadlines and responsibilities that overlap with the timeframe for seeking certiorari. Among other things, undersigned counsel is preparing a petition for a writ of certiorari in *Commonwealth of Pennsylvania v. Bette Eakin*, No. 25-1644 (3d Cir.), which is currently due to this Court by February 11, 2026—only five days after the current deadline in this matter. See *Commonwealth of Pennsylvania v. Bette Eakin*, No.

25A658, order (U.S. Dec. 5, 2025). Undersigned counsel is also preparing petition in the Pennsylvania Supreme Court in *B.W. v. Pennsylvania State Police*, 433 M.D. 2018 (Pa. Cmwlth.), a case challenging aspects of Pennsylvania's sex offender registration statute. That petition is due by January 30, 2025. 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 again by 30 days, up to and including March 9, 2026.

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