

No. 26-141

**In the Supreme Court
of the United States**

DONALD J. TRUMP, PETITIONER

v.

E. JEAN CARROLL, RESPONDENT

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

**BRIEF OF *AMICUS CURIAE* DAVID BOYLE
IN SUPPORT OF RESPONDENT**

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AMICUS CURIAE STATEMENT OF INTEREST

The present *amicus curiae*, David Boyle (hereinafter, “Amicus”),¹ following up on his amicus brief in 25-573, *Trump v. Carroll* (“*Carroll II*”), respectfully supports Respondent, Elizabeth Jean (“E. Jean”) Carroll, against Petitioner Donald J. Trump’s hateful government-powered libels. While Amicus believes a President should have copious power as Chief Executive, that does not mean *unlimited* power, especially power to abuse someone he raped (“digital rape” being rape by common-sense terms) and defamed, and still defames.

Indeed, Trump’s 2019 “official statement” attacks on Carroll (“the Statements”) are like a Trojan horse, *see* the current Christopher Nolan film *The Odyssey* (Syncopy 2026; based on Homer’s *Odyssey* (c. 800 B.C.)) (condemning immorality of wooden-horse ruse used to invade and butcher Troy). Even if official presidential statements have possible immunity from defamation suits, that immunity may not apply here, especially if Trump’s attacks are but rants and venom, merely pretending to be legitimate official statements—just as the Trojan Horse pretended to be an offering to the gods, when it was actually a receptacle for Greek assassins, treachery, and death.

Trump’s sordid conduct has even occasioned shock that someone would represent him in court here, *see, e.g.*, Will Neal, *Elite Law Firm in Civil War Over Trump Sex Abuse Case*, *The Daily Beast*, July 10, 2026, 7:16 a.m., <https://tinyurl.com/yc8vndr3>, re Sullivan & Cromwell, whose “move has sparked

¹ No party or its counsel wrote or helped write this brief or gave money for its writing or submission, *see* S. Ct. R. 37.

uproar among the firm's top ranks. 'The Carroll cases were of particular concern for some lawyers because of the nature of Carroll's allegations,' the [*Wall Street Journal*] writes, adding that firms of this size 'rarely take on such cases for fear of reputational damage.'" *Id.*

Of course, the President can choose any counsel, and no law firm is here disparaged; Amicus is merely noting the hideousness of the subject matter, Trump's raping/battering/defaming a now-elderly woman, Carroll, and seeking to escape punishment.

Thus, even though some Questions Presented here may be interesting in the abstract, this case, "*Carroll I*" (26-141), is a very poor vehicle for considering them. The messy, maybe bad-faith, way Trump has handled the case, radiating "reputational damage", Daily Beast Article, *supra*, hardly provides a clean vehicle. And if Trump's statements are not only outrageous but *ultra vires*, immunity might not even be claimable here.

Finally, and shockingly, Trump should have brought up the present Questions Presented, back during his 25-573 certiorari petition, given his assertion in his petition for rehearing, *see id.* at 3-5, that the Statements shouldn't have been accepted as evidence in *Carroll II*, due to immunity issues. If he knew back in 2025 that immunity was an issue, he delayed hugely by not offering immunity-themed Questions Presented until now: hence, the present Questions are, arguably, highly untimely and have thus abandoned any right to certiorari.

Following the Summary of Argument, then, we start with the "old business" of 25-573, old wineskins

which may mix badly with the new, 26-141:

SUMMARY OF ARGUMENT

Trump has essentially waived his denial of raping Carroll, since he did not present here or in his 25-573 rehearing petition, new information favoring that denial (as opposed to denying defamation-liability).

The 25-573 certiorari petition should have litigated immunity issues (e.g., in Questions Presented), instead of waiting for the rehearing petition to do so by saying the Statements were immune and should not have been evidence in 25-573, since Petitioner had previously known that immunity issues were crucial. Moreover, the *Carroll II* jury was not even allowed to consider the Statements, *see* the 26-141 certiorari petition's appendix ("App."), at 231a. This all does not recommend rehearing 25-573.

Moreover, by not litigating immunity issues early in 25-573, when he knew of them, Petitioner has arguably waived those issues now, which should prevent certiorari here.

A sample statement shows how Trump could possibly have defended himself and denied Carroll's claims, without making ugly *ultra vires* attacks upon her which misused state power, as a sort of Trojan horse. Trump's actual, hateful and defamatory Statements are then analyzed, showing their evils. The Statements name Justice Kavanaugh, *see id.* for each, which may counsel special arrangements.

Amicus asks whether any presidential statement with “official” fig leaves, mentioning serving America and/or some public-concern issue, could putatively immunize anything, even, say, calls for racist violence.

Trump v. United States, 603 U.S. 593 (2024) (“*Trump*”), is about criminal immunity, so doesn’t merit certiorari for Question Presented 2, though *Trump*’s observations on official statements, say, could be considered in other ways.

Question Presented 1, on, *see id.*, a supposed need for a President to waive immunity explicitly, should not receive certiorari, since Trump may have waived immunity, either explicitly or not. Even if waiver must be explicit, that may not call for certiorari, given the Statements’ indefensibility under any circumstances, and the “unclean hands”, twisted vehicle this case would present.

Question Presented 3, on, *see id.*, immunity under the Federal Employees Liability Reform and Tort Compensation Act of 1988 (“Westfall Act”), 28 U.S.C. § 2679, does not deserve certiorari, since other sources may limit immunity, even if the statute itself somehow has no time limit for substituting the United States for Petitioner.

Finally, Trump’s continuing vicious attacks on Carroll threaten American democracy, as the State should serve the People, not abuse them.

ARGUMENT

I. TRUMP’S RAPE LIABILITY IS ARGUABLY

**SETTLED, SINCE HE PRESENTS NO NEW
INFORMATION CHALLENGING IT**

First off: the instant certiorari petition and its Questions Presented do not really challenge the issue of Trump’s rape/sexual-battery liability, especially since the words “rape” and “sexual” don’t appear in the petition, *id.*; just as the 25-573 petition for rehearing did not challenge Trump’s rape/sexual battery liability, since that petition, *see id.* at 1, mentions only immunity and the then-pending *Carroll I* “cert” petition as reasons for rehearing. Thus, Trump’s liability for raping Carroll (as opposed to defamation-liability) may be regarded as settled.

**II. THE 25-573 CERTIORARI PETITION KNEW
OF IMMUNITY ISSUES, BUT DIDN’T CLAIM
IMMUNITY FOR THE STATEMENTS
(STATEMENTS THE *CARROLL II* JURY
WAS FORBIDDEN TO CONSIDER),
AND DELAYED UNTIL THE REHEARING
PETITION TO EXPLOIT IMMUNITY ISSUES**

As for immunity issues: the 25-573 rehearing petition asks the Court “either [to] grant the petition in this case, or hold it pending the disposition of the petition in *Carroll I*”, *id.* at 1. Trump thus desires, *see id.*, linkage of 25-573 to 26-141; indeed, Trump says Carroll “improperly introduced and relied on President Trump’s 2019 official statements at the *Carroll II* trial. Exhibits 1 and 2 admitted into evidence at that trial were th[os]e statements[.]” Pet. for Reh’g at 2-3. But this poses a problem for Trump.

First: as the rehearing petition doesn't tell readers, *see id.*, "[T]he Court instructed the jury in *Carroll II* not to consider the 2019 statements", App. at 231a. This is a gross, even titanic material omission by that petition; if the jury was ordered "not to consider the 2019 statements", *id.*, the Statements' mere presence as exhibits in *Carroll II* may not be important, thus, not a reason to grant the petition or hold the case.

(And were the Statements the *only* exhibits in that case, or were there many other exhibits? Again, there seems little reason to grant rehearing in 25-573.)

Moreover, as for immunity: the 25-573 certiorari petition explicitly mentions, "*Carroll I* was delayed because of proceedings concerning President Trump's presidential immunity defense and whether the United States should be substituted as a party for President Trump[, and] the Westfall Act", *id.* at 10. However, nowhere in that petition does Trump *employ* those immunity/Westfall Act issues as a reason for certiorari, or suggest that the Statements shouldn't have been allowed in *Carroll II*.

Instead, Trump waited until his July 2026 rehearing petition, as noted *supra*, to weaponize those immunity issues, which he could have brought up in the November cert petition: issues he must have known about at that earlier time, since he explicitly mentions immunity and Westfall there, *id.* at 10.

This may be seriously bad-faith litigation. If the Statements were so sacrosanct, immune, thus unfit as evidence in *Carroll II*, then Trump should have mentioned that *in the Carroll II cert petition*, not

hidden the issues until the rehearing petition. Was the hiding done deliberately, so as to provide a false excuse for rehearing if needed, some might ask?

The rehearing petition says, “Rehearing is warranted because President Trump will imminently file a petition for a writ of certiorari in ... (*“Carroll I”*), which will present vital questions concerning Presidential immunity for official statements.” *Id.* at 1. But Trump didn’t have to wait for a *Carroll I* pending cert petition to bring up immunity for the Statements; he could’ve done that in the *Carroll II* cert petition the previous year.

As Carroll somewhat similarly observed,

If successful petitions for rehearing are “rare birds,” ... Defendant’s pending petition cannot possibly get off the ground. The Supreme Court limits rehearing to two bases: “intervening circumstances of a substantial or controlling effect” or “other substantial grounds not previously presented.” ... Defendant’s petition satisfies neither, since the only “intervening circumstance” it identifies is Defendant’s “forthcoming petition in [the related case].” ... But Defendant previously told the Court about that in a letter dated June 2, 2026, suggesting that “the Court may wish to consider the petitions together.” ... The sole ground for rehearing was therefore already before the Supreme Court when it denied certiorari.

Br. of Pl.-Appellee E. Jean Carroll in Opp'n to Mot. for a Stay or Inj. Pending Appeal, <https://tinyurl.com/bdcxj9w7>, 26-1840 (2nd Cir.), July 20, 2026, at 17 (citations omitted). Thus, *see id.*, if the Court already rejected Trump's June 2 letter's idea when refusing certiorari on June 29, there may be little left to fuel Trump's quest for rehearing.

And there may be even less fuel than Carroll noted, since, as observed *supra*, Trump should have offered immunity-related Questions Presented back on November 10, 2025, in his 25-573 cert petition, not waited until July 28, 2026, and the present cert petition. (Not to mention the *Carroll II* jury's not considering the Statements.)

True, there is one source, App. at 57a, the court-of-appeals denial of rehearing *en banc*, dated April 29, 2026, which is well after November 2025. Still, there were many sources, App. at 1a-56a, 146a-287a, from before November 2025, that the 25-573 cert petition could have drawn upon, to discuss immunity issues. And after April 29, 2026, the denial of rehearing *en banc*, *supra*, could have been mentioned in a 25-573 supplemental brief or letter.

Even if Trump had waited until April 29 itself to claim immunity for the Statements, that still would've been c. 4 months before now, and c. 2 months before his June 2 letter; and the Court could have considered those issues at that time, instead of waiting for the July petition for rehearing to exploit those issues.

...Petitions for rehearing are very rarely granted; they should be granted even less often, when somebody arguably tries to "hide the ball" from the Court, by not litigating issues (e.g., immunity) in the

certiorari petition, that they should have litigated and offered as Questions Presented then, instead of waiting for the rehearing petition to exploit them; and when a petitioner neglects to mention the jury was forbidden to consider his supposedly-immune Statements.

III. PETITIONER MAY HAVE FORFEITED IMMUNITY-BASED “QUESTIONS PRESENTED” PERMANENTLY, BY NOT BRINGING THEM UP IN 25-573

Moreover, as implied *supra* at 2, Petitioner may be in a trap of his own devising. That is, by adamantly asserting, in his rehearing petition, *see id.* at 1, that the Statements’ immunity is enough to demand rehearing of 25-573 (since the Statements were exhibits in *Carroll II*), Trump inadvertently raises the question of why he didn’t raise questions, especially Questions Presented, about immunity during 25-573, whether in the cert petition, or just after April 29, 2026, until his June 2 letter (which, *see id.*, didn’t even raise immunity directly, but just mentioned the upcoming *Carroll I* petition)—a letter the Court disregarded when he asked to consider *Carroll I* and *Carroll II* together.

So, since Trump claims that immunity was actually an issue in 25-573, but he didn’t raise that issue in his 25-573 Questions Presented, *see id.* for each, then he arguably has forfeited that issue or issues permanently, and is futilely raising them now. *Cf.* “‘Immunity-related issues’ under the [Westfall] Act ‘should be decided at the earliest opportunity.’” *Osborn [v. Haley]*, 549 U.S. [225,] 253 [(2007)]”, App. at 129a (some brackets removed); i.e., to delay

litigation of immunity issues may be fatal to the delayer's case.

However, given the viciousness and excess of Trump's Statements, no immunity provision may help him in any case, as we now explore.

**IV. COULD TRUMP HAVE MADE
ACCEPTABLE STATEMENTS DEFENDING
HIMSELF, NOT ATTACKING CARROLL? ONE
EXAMPLE TO CONSIDER, ALONGSIDE
HIS ACTUAL AGGRESSIVE STATEMENTS**

First, let us examine what a possibly-immune statement from Trump might have looked like. There is, perhaps sadly, some possible immunity for public officials purporting to serve the public good, who make statements with some false components (the legal theory will be discussed later). The example below may follow those standards:

A writer, E. Jean Carroll, recently accused me of raping her at Bergdorf Goodman in 1996. I strongly deny this. I certainly do not remember that happening, and do not recall ever even meeting her. To be fair, I am not calling her a liar, since she may somehow believe this false story. Maybe she was thinking of another man. Her book accuses other men of similar acts.

I hope she is not telling this story to sell her new book; I'm not saying she is, and I can't see into her mind, so I'm not going to accuse her. But I am obliged to defend my reputation, so my family will

know I am not guilty of her terrible accusation. Also, this accusation may distract from my time and effort to be a good President and serve the American people, so I strongly deny it.

Lastly, I apologize for any disrespect or mistreatment of women people think I may have ever done, such as the unwise words I chose on the *Access Hollywood* tape from 2005. We should all speak out against assaults on women, or disrespect for women. If I want to serve the American people, I myself have to be a role model they can trust. Thank you for listening.

That model statement *supra* still has various lies by Trump (that the rape/sexual battery didn't happen, and that he never met Carroll), *see id.*; but at least the statement is in *defensive* mode—protecting himself against Carroll's accusation—, not a bag of vile *attacks* on Carroll, who is, after all, his employer, i.e., an American taxpayer. He specifically does not call her a liar, and doesn't say she made up the story to sell her book (even if he brings up the hypothetical possibility), and doesn't say she falsely accused other men (even if he mentions the accusations).

Too, he explicitly mentions his “masters” (re *respondeat superior*), the American people, who employ him, so he could argue that at least part of his statement serves Americans. And finally, he shows actual contrition and self-awareness, mentioning his vile words, e.g., “[g]rab[bing] [women] by the pu[denda]”) from the infamous

Access Hollywood tape, *id.*; purports to respect women and their right not to be raped/abused—but without calling Carroll a liar; confirms he has responsibilities, not just rights; and ends with a polite “Thank you”, *id.*

It is a sin to lie, but even despite Trump’s lies (no rape, never met Carroll) in the model statement above, he might not have broken any *earthly* laws, possibly, in that defensive statement which tries to protect him, and asserts an American public interest, but without *per se* attacking Carroll at all.

Now let’s see the real Statements, starting with the first, from June 21, 2019:

Regarding the “story” by E. Jean Carroll, claiming she once encountered me at Bergdorf Goodman 23 years ago. I’ve never met this person in my life. She is trying to sell a new book -- that should indicate her motivation. It should be sold in the fiction section.

Shame on those who make up false stories of assault to try to get publicity for themselves, or sell a book, or carry out a political agenda -- like Julie Swetnick who falsely accused Justice Brett Kavanaugh. It’s just as bad for people to believe it, particularly when there is zero evidence. Worse still for a dying publication to try to prop itself up by peddling fake news -- it’s an epidemic.

Ms. Carroll & New York Magazine:
No pictures? No surveillance? No video?

No reports? No sales attendants around?? I would like to thank Bergdorf Goodman for confirming they have no video footage of any such incident, because it never happened.

False accusations diminish the severity of real assault. All should condemn false accusations and any actual assault in the strongest possible terms.

If anyone has information that the Democratic Party is working with Ms. Carroll or New York Magazine, please notify us as soon as possible. The world should know what's really going on. It is a disgrace and people should pay dearly for such false accusations.

App. at 4a-5a (citation omitted).

This Statement is aggressive and attacks Carroll ceaselessly, *see id.*, rather than just defending Trump. It puts Carroll's story in quotes ("story"), *id.*, which is derisive and implies Carroll is a liar. It falsely says he never met Carroll; and claims and/or implies, without evidence, that she made up the story to get herself publicity, sell books, and serve "a political agenda", which may include "the Democratic Party", *id.*

While "All should condemn false accusations and any actual assault in the strongest possible terms", *id.*, may be in itself a worthwhile sentiment: in context here, it seems a mere fig leaf, *de minimis*, or even a Trojan horse, being tainted by Trump's saying, falsely, that Carroll's accusation is false. And

the Statement doesn't mention the American people in particular, the "masters" of their employee Trump, so his words do not purport to serve them.

As well, there is no apology for his own abusive behavior/words towards women; and "people should pay dearly for such false accusations", *id.*, is a vengeful and threatening way to end—again, an attack on Carroll, not a moderate defense of himself.

Finally, note that Trump spoke recklessly or intentionally falsely, lacking knowledge of Carroll's affairs:

Trump acted with, at a minimum, reckless disregard for the truth. In his deposition testimony, Trump admitted that prior to making his 2019 statements, he never read Carroll's book or the *New York* magazine publication, never contacted Bergdorf Goodman's, never did any research on Carroll, and never had anyone working for him research Carroll. He also admitted that, before issuing his 2019 statements, he had no knowledge of Carroll's book deal, financial circumstances, or political affiliation.

App. at 28a (footnote omitted).

The next Statement is from June 22, 2019:

Reporter: Mr. President, you had said earlier that you never met E. Jean Carroll. There was a photograph of you and her in the late 1980's –

Trump: I have no idea who this woman is. It is a totally false accusation. I think she was married -- as I read; I have no idea who she is -- but she was married to a, actually, nice guy, Johnson -- a newscaster.

Reporter: You were in a photograph with her.

Trump: Standing with [my] coat on in a line -- give me a break -- with my back to the camera. I have no idea who she is. What she did is -- it's terrible, what's going on. So it's a total false accusation and I don't know anything about her.

And, you know, people have to be careful because they're playing with very dangerous territory. And when they do that -- and it's happening more and more. When you look at what happened to Justice Kavanaugh and you look at what's happening to others, you can't do that for the sake of publicity.

New York Magazine is a failing magazine. It's ready to go out of business, from what I hear. They'll do anything they can. But this was about many men, and I was one of the many men that she wrote about. It's a totally false accusation. I have absolutely no idea who she is. There's some picture where we're shaking hands. It looks like at some kind of event. I have my coat

on. I have my wife standing next to me. And I didn't know her husband, but he was a newscaster. But I have no idea who she is -- none whatsoever.

It's a false accusation and it's a disgrace that a magazine like New York -- which is one of the reasons it's failing. People don't read it anymore, so they're trying to get readership by using me. It's not good.

You know, there were cases that the mainstream media didn't pick up. And I don't know if you've seen them. And they were put on Fox. But there were numerous cases where women were paid money to say bad things about me. You can't do that. You can't do that. And those women did wrong things -- that women were actually paid money to say bad things about me.

But here's a case, it's an absolute disgrace that she's allowed to do that.

App. at 5a-6a (citation omitted). This Statement, like the previous one, aggressively attacks Carroll ceaselessly, *see id.*, rather than only defending Trump. Trump repeatedly, falsely says he doesn't know who Carroll is or "know anything about her", *id.* (he certainly knows she's suing him, and that she is a book-writer, once married to John Johnson), even after, *see id.*, the 1980's photograph of him with her has surfaced. He again claims and/or implies, without evidence, that she made up the story to get publicity; and he now even claims, evidence-free, that she was paid to fabricate the story, *see id.*, an

exceptionally corrosive claim.

And this time, Trump doesn't even bother to say "All should condemn false accusations and any actual assault in the strongest possible terms", but just offers, "And, you know, people have to be careful because they're playing with very dangerous territory" (which could be seen as a threat to Carroll), and "When you look at what happened to Justice Kavanaugh and you look at what's happening to others, you can't do that for the sake of publicity." *Id.* So, condemning "actual assault" has disappeared, making one wonder if the first Statement's mentioning it was even sincere, or just, again, a fig leaf or worse.

Too, once again, the Statement has no mention of the American people as a whole, his employers.

And Trump's last words, "But here's a case, it's an absolute disgrace that she's allowed to do that", *id.*, sound vengeful and oppressive, maybe even a call for a prior restraint on Carroll's free speech—once more, attacking Carroll, not defending himself in a moderate way.

Finally, on June 24, 2019, Trump said, "I'll say it with great respect: Number one, she's not my type. Number two, it never happened. It never happened, OK?" App. at 6a (citation omitted). Though it still commits the falsehood of denying the assault, this statement may be considered more defensive, less attack-oriented, than the previous Statements, *see id.* for each; and indeed, "Carroll withdrew her defamation claim based on this statement, but she maintained ... it was relevant to ... punitive damages", App. at 6a n.4.

In all, the first two Statements are vicious, false, and attack Carroll rather than defending Trump. Amicus is not sure how they can be within the outer perimeter of Trump's presidential duties, or how they serve any public interest except in a "drive-by", *de minimis*, hypocritical, or Trojan-horse way.

(By the way, Trump mentions Justice Kavanaugh—seeking Kavanaugh's favor?— in both long Statements, portraying him as someone falsely accused of assault, *see id.* for each. Without saying this should, or shouldn't, call, say, for that Justice's recusal from this case, or part of it—e.g., recusing from considering the content of the Statements, as opposed to theoretical legal issues of immunity—, it would be remiss *not* to bring up the idea of appropriate consideration, when the Statements specifically name one sitting Justice, twice, whose history has some resemblance, alleged or real, to that of Trump. Sensitivity and neutrality are important here, in seeking justice and fairness.)

V. CAN ANY PRESIDENTIAL STATEMENT BE IMMUNIZED BY TOSSING IN SOME MENTION OF AMERICANS, AND A TINY NOD TO "IMPORTANT ISSUES"?

On that note, Amicus wonders if Presidents may dare to make *any* abusive verbal attack they want, as long as they "tick off the boxes" of a) some quick mention of serving the American people, and b) an also-quick reference to some "issue of public concern".

If so, that may be a problem, since a President could make a quick (or long) mention of those two

things, and then speak any evil with impunity. He could use the phrase “enemy of the people”, as one can imagine North Korea, Iran, or Nazi Germany doing, in a statement, and say that since it mentions the people, his employers, he is immune.

Consider this sample statement: “Haitians are from a sh[]thole country. Too many are here, straining our resources. But I’m not saying all of them should be beaten or killed: there are some good Haitians, they voted for me. FIGHT ENEMIES OF THE PEOPLE!”

Following this statement, in the next 24 hours, dozens of Haitians are beaten, and several killed. Their families sue Trump for defamation, and his lawyer says the statement mentions serving the American people, and says “there are some good Haitians”, which is an issue of public importance (and a backhanded compliment of sorts, even), and demands immunity from defamation (or any other punishment) for the statement.

Is immunity a good idea, under these circumstances? The two boxes (serving Americans; public-interest issue) were ticked, hypertechnically. (And some might argue that even ticking only *one* of those boxes may be enough for immunity.)

Indeed, the district court notes a similarly unpleasant hypothetical: “At a rally promoting his reelection, an incumbent President touts his policy accomplishments[,] but during his speech he instructs members of the crowd to ‘punch’ a protester ‘in the face right now.’” App. 260a (citation omitted).

Amicus adds that even an “official

communication” which isn’t during a possibly-unofficial event like an election rally, may be subject to the common-sense consideration above, i.e., that presidential communications shouldn’t be immune from punishment for non-presidential (not within the President’s core power/concerns) messages like “Punch someone in the face.”

In that line, the district court observes, “Mr. Trump does not identify any connection between the allegedly defamatory content of his statements – that Ms. Carroll fabricated her sexual assault accusation and did so for financial and personal gain – to any official responsibility of the president. Nor can the Court think of any possible connection.” App. 261a.

Thus, it may be pointless even to bother pretending the Statements can be defended by legal immunity; though, for completeness’ sake, we now explore legal immunity.

VI. *TRUMP V. UNITED STATES* IS ABOUT CRIMINAL PROCEEDINGS, THUS, NOT FULLY RELEVANT HERE

The second Question Presented—which, being muddled, should be disposed of first—evokes, *id.*, *Trump, supra* at 4, which involves “immunity from *criminal prosecution*”, *id.* at 602 (Roberts, C.J.) (emphasis added), not civil suits. *Mirabile dictu*, Trump’s petition gives no indication of this. (The very-brief “*Trump*, 603 U.S. at 609 (courts cannot ‘adjudicate a criminal prosecution that examines’ official acts)”, *id.* at 30, doesn’t openly admit *Trump* is not really about civil-suit immunity.)

So, Question Presented 2, “Whether a sitting President’s public statements ... are official acts protected by Presidential immunity under *Trump* [etc.]”, borders on incoherence. The supposed “official acts” in *Carroll I* aren’t about criminal matters, but are some statements attacking Carroll, for which Trump alleges he can’t be sued. Even if *Trump* expands presidential immunity *vis-à-vis* criminal matters, that case, *Trump*, is hardly germane to civil suits. The Court should not waste its time by granting cert on the second Question Presented.

(If the Court wishes, say, to “fold in” Petitioner’s using *Trump* to claim that an “aspect of Presidential power is using the office’s “bully pulpit” ... on ‘matters of public concern’”, Pet. at 4 (citation omitted), that can be done without granting cert to a Question Presented revolving around *Trump*. Any unnecessary Question Presented is an unfair/duplicative/wasteful “extra bite at the apple” for a petitioner.)

VII. EVEN IF TRUMP DID NOT EXPLICITLY WAIVE IMMUNITY, QUESTION PRESENTED 1 DOES NOT DESERVE CERTIORARI, DUE TO HIS STATEMENTS’ MALICE, AND THE TAINTED VEHICLE THIS CASE PROVIDES

Question Presented 1 is, “Whether a President can be found to have forfeited[/]waived Presidential immunity without ever expressly renouncing such immunity, solely because his first responsive pleading did not invoke Presidential immunity by name”, *id.*; and Trump invokes *United States v. Helstoski*, 442 U.S. 477, 490-491 (1979), noting “that a Member of Congress cannot be found to have

forfeited or waived legislative immunity absent an ‘explicit and unequivocal renunciation,’ ‘assuming [waiver] is possible’ at all.” Pet. at (I).

Trump may have never used the exact words, “I explicitly and unequivocally renounce my immunity”, but lower courts have found he renounced it, *see, e.g.*, the Second Circuit’s “h[o]ld[ing] that Trump waived his immunity defense here by, among other things, failing to assert it in his answer to Carroll’s complaint in state court and conceding to it at oral argument.” App. at 133a-134a (citation omitted).

That Circuit also ruled that *Trump* “did not alter the prevailing law on whether presidential immunity can be waived”, and thus “does not constitute an intervening change of law justifying reconsideration of our earlier decision [against immunity].” App. at 17a-18a.

That lower court also doubts that *Helstoski*, *supra*, helps Trump: “Trump’s second argument -- that a waiver of presidential immunity requires an ‘explicit and unequivocal renunciation,’ *Helstoski*, 442 U.S. at 491, ... -- is also foreclosed because it was ‘ripe for review at the time of [Trump’s] initial appeal but . . . nonetheless foregone”, *id.* at 18a (citation omitted) (brackets in original).

Then that court asserts *Trump* “did not announce new law when it observed that presidential immunity is rooted in the structural separation of powers”, so that there is no change in law which would let *Helstoski*, which upheld legislators’ immunity and required “explicit and unequivocal renunciation” of immunity, drag presidential-

immunity law into its ambit and mandate “explicit and unequivocal renunciation” of immunity for Presidents too, *see* App. at 18a-19a.

Thus, it seems *Helstoski* is helpless to aid Trump. However, even if, say, Petitioner is somehow right about *Helstoski* and a need for Presidents to renounce immunity expressly, there may be no immunity anyway, since, as noted *supra*, Section IV, Trump’s Statements go beyond his putative rights of self-defense into unconscionable attacks on Carroll. The malicious quality of his Statements (malice in the sense of viciousness, and also untruthfulness either deliberate or reckless, so, maybe both “common-law malice” and “actual malice”), far exceeds the needs of true defense.

Moreover, even if Trump were right about *Helstoski*, what about the following, from the State-court period of the case, where Trump

expressly noted, however, that he was only seeking “temporary” immunity from suit. *Id.* at 21 (July 16, 2020 Letter to the Court) (“[N]o one is seeking to ‘escape accountability’ here . . . [Carroll] is free to pursue this action when the President is no longer in office.”).

App. at 7a. That, *see id.*, looks very explicit in renouncing immunity, at least as soon as January 20, 2021, when Trump left office. And it says nothing about demanding immunity again if he gets reelected, as he did. And notably, it says he isn’t trying to “‘escape accountability’”, *id.*, which doesn’t

match the idea that he is forever immune to defamation liability for the Statements.

Thus, for that and other reasons listed here, this case is an incredibly tainted vehicle for certiorari for Question Presented 1, *Helstoski* or not. The Court should not grant cert.

**VIII. THE WESTFALL ACT, EVEN IF NOT
STATUTORILY LIMITED IN TIME, MAY BE
LIMITED OTHERWISE, AND UNAVAILABLE
TO GIVE TRUMP IMMUNITY**

The final Question Presented, *see id.*, essentially asks whether the Westfall Act, *supra* at 4, should have let ex-Attorney General Pam Bondi substitute the United States for Trump as defendant.

Even if there may be no limitation in the statute itself on the time when Attorneys General may do such things (and the Second Circuit did think there was a limitation, *see, e.g.*, App. at 122a), there may be other limits pertinent here, e.g., once again, “‘Immunity-related issues’ under the [Westfall] Act ‘should be decided at the earliest opportunity.’” *Osborn [v. Haley]*, 549 U.S. [225,] 253 [(2007)]”, App. at 129a (some brackets removed).

When Bondi re-certified Trump for substitution, she did not do so “at the earliest opportunity”, *id.* Not in January 2025; or February; or March. She waited 3 months, until April, as the Second Circuit notes: “April 11, 2025 – when Trump had been President for nearly three months and this appeal had been fully briefed for nearly two months”, App. at 150a. In other words, she could have certified Trump before the “appeal had been fully briefed”,

id., with all the time spent and expectations raised by full briefing; but she didn't. (Her predecessor William Barr certified Trump *on the same day*, September 8, 2020, that the case was removed to federal court, *see* App. at 147a-148a (citations omitted); it seems, then, that Bondi should have moved much quicker.)

Thus, Bondi ran afoul of this Court's command to resolve Westfall Act issues immediately, *see Osborn, supra*, at 253. Certiorari should not be granted.

* * *

Nolan's *The Odyssey* not only emphasizes how the Trojan Horse let Greeks in to butcher Trojans, including women—and one Greek woman, Penelope, is brutally harassed by men for decades, not unlike what Trump has done to Carroll—, but also shows that the Greeks' brutal and deceptive actions led to the collapse of the Bronze Age and fall of civilization, *see id.* On that note, the Westfall Act's being called "Westfall" makes Amicus think that if America is the leading nation of the "West", it might indeed help make the "West fall", if America's executive leader, Trump, can misuse state power, employing it as a Trojan horse, with immunity from punishment for abusing whomever he wants, whenever he wants—including those he has already abused for decades, such as Carroll.

How will democracy, the West, and America appear to people, if this kind of outrage can occur with impunity? The U.S.A. is the Land of Liberty, not the land of libel and lawless leaders.

And Trump *still* continues to abuse Carroll, ceaselessly, lessening her life's liberty to pursue happiness; *see, e.g.*, his untruthful June 29, 2026,

8:16 a.m. “Truth Social” post, <https://truthsocial.com/@realDonaldTrump/posts/116834055569312013>:

Surprisingly, the Supreme Court declined to “review” a Fake Case brought against me by a woman I never met (Decades old celebrity photo line, standing with her husband, does not count!). I will continue the fight against this Weaponization and Lawfare Case against me, including the ridiculous claim of Defamation, with all of my power and strength. [etc.]

Id. It is time for this obscenity to stop, despite Trump’s false claims of “immunity”. And even if the Court cannot stop it, it can certainly help make sure that Trump pays for his defamation of his victim, whose odyssey of misery has gone on far too long.

CONCLUSION

Amicus respectfully asks the Court to affirm the decision below; and humbly thanks the Court for its time and consideration.

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Respectfully submitted,

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