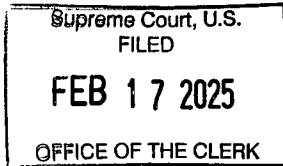


24-921



No. _____

In the
Supreme Court of the United States

KENNETH SORAK,

Petitioner,

v.

TERESA CISNEROS AND
AMANDA BRADLEY,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

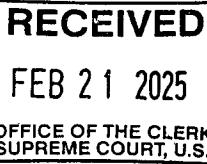
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February 18, 2025

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QUESTIONS PRESENTED

1. Did the 10th Circuit err in its application of the Rooker-Feldman Doctrine given that the 4th circuit, in *Gibson v. Goldston*, No. 22-1757 (4th Cir 2023) and the 11th Circuit, in *Behr v. Campbell*, No. 18-12842 (11th Cir. 2021), have issued conflicting opinions in their orders as to the limits of expansion and application of Rooker-Feldman as a basis for Rule 12(b)(1) Motion to Dismiss when state agents (*i.e.* State District Court Judges) acting under color of law violate a litigants constitutional rights?
2. Did the 10th Circuit err in its application of the 11th Amendment by granting and affirming the Defendants Rule 12(b)(1) Motion to Dismiss when state agents (*i.e.* State District Court Judges) acting under color of law claiming to be in their official judicial capacity violated the litigant's constitutional rights, *see Scheuer v. Rhodes*, 416 U.S. 232 (1974)?

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Tenth Circuit
No. 24-1170

Kenneth Sorak, *Plaintiff-Appellant*, v.
Theresa Cisneros in her official capacity as
Senior Judge; Amanda Bradley, in her official
capacity as Magistrate; Colorado Judicial Branch,
Defendants-Appellees.

Final Judgment: December 4, 2024

U.S. District Court for the District of Colorado
No. 1:23-cv-02391-CNS-NRN

Kenneth Sorak, *Plaintiff*, v. Theresa Cisneros
in her official capacity as Senior Judge;
Amanda Bradley, in her official capacity as
Magistrate; Colorado Judicial Branch, *Defendants*.

Final Judgment: April 3, 2024

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PROCEEDINGS	ii
TABLE OF AUTHORITIES	v
PETITION FOR A WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
A. Introduction	3
B. Summary of Law	3
C. Background of the Case	4
REASONS FOR GRANTING THE PETITION	8
I. There Is Conflict Amongst the Circuit Courts as to Whether There Is Jurisdiction to Hear State Cases at the Federal Level When There Is a Denial of a Litigant's Constitutional Rights Due to the <i>Rooker-Feldman</i> Doctrine and the 11th Amendment	8
II. Claims for Damages Are Not Barred by the 11th Amendment Nor Is It a Basis for Granting Judicial Immunity When State Agents Act Counter to the Constitution	16
CONCLUSION	21

TABLE OF CONTENTS – Continued

	Page
APPENDIX TABLE OF CONTENTS	
OPINIONS AND ORDERS	
Order and Judgment, U.S. Court of Appeals for the Tenth Circuit (December 4, 2024).....	1a
Order Adopting Magistrate Report and Dismissing Case, U.S. District Court for the District of Colorado (April 3, 2024).....	6a
Final Judgment, U.S. District Court for the District of Colorado (April 3, 2024).....	14a
Magistrate Recommendation on Defendants' Motion to Dismiss, U.S. District Court for the District of Colorado (January 23, 2024).....	16a

TABLE OF AUTHORITIES

	Page
CASES	
<i>Ableman v. Booth</i> , 62 U.S. 506 (1858)	14, 17
<i>Al Shimari v. CACI Intern, Inc.</i> , 679 F.3d 205 (4th Cir. 2012)	13
<i>Bd. of Regents of State Colls. v. Roth</i> , 408 U.S. 564 (1972)	15
<i>Behr v. Campbell</i> , No. 18-12842 (11th Cir. 2021)..	i, 7, 10, 11, 12, 13
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007)	14
<i>Cooper v. Aaron</i> , 358 U.S. 1 (1958)	15
<i>Ex parte Young</i> , 209 U.S. 123 (1908)	8
<i>Exxon Mobil v. Saudi Basic Industries Corp.</i> , 544 U.S. 280 (2005)	10, 11, 12
<i>Forrester v. White</i> , 484 U.S. 220 (1988)	16, 17, 18
<i>Gibson v. Goldston</i> , No. 22-1757 (4th Cir 2023).....	i, 13, 14, 17
<i>Haines v. Kerner</i> , 404 U.S. 519 (1972)	3
<i>Haze v. Harrison</i> , 961 F.3d 654 (4th Cir. 2020)	14
<i>Howlett v. Rose</i> , 496 U.S. (356) (1990).....	14, 17

TABLE OF AUTHORITIES – Continued

	Page
<i>Keith Haywood vs Curtis Drown,</i> 556 U.S. 729 (2009)	9
<i>Mapp v. Ohio,</i> 367 U.S. 647 (1961)	6
<i>Mullane v. Central Hanover Bank,</i> 339 U.S. 314 (1950)	4
<i>Nicholson v. Schafe,</i> 558 F.3d 1266 (11th Cir. 2009)	10, 11
<i>Osborn v. Bank of the United States,</i> 22 U.S. 738 (1824)	15
<i>Scheuer v. Rhodes,</i> 416 U.S. 232 (1974)	i, 17, 18
<i>Stump v. Sparkman,</i> 435 U.S. 362 (1978)	16
<i>Valley v. Northern Fire & Marine Ins. Co.,</i> 254 U.S. 354 (1920)	9, 10, 11, 16
<i>Village of Willowbrook v. Olech,</i> 528 U.S. 562 (2000)	17

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. IV	2, 6, 14
U.S. Const. amend. VI	8
U.S. Const. amend. XI	1, 3, 4, 8, 16, 17, 19
U.S. Const. amend. XIV.....	2, 4, 5, 6, 10, 14, 15, 17
U.S. Const. art. III, § 2	15
U.S. Const. art. V.....	17
U.S. Const. art. VI	9, 15, 19

TABLE OF AUTHORITIES – Continued

	Page
STATUTES	
28 U.S.C. § 1254(1)	1
28 U.S.C. § 1331.....	15
28 U.S.C. § 144.....	8
28 U.S.C. § 455.....	8
42 U.S.C. § 1983.....	3, 4, 8, 9, 13
Colo. Rev. Stat. § 13-14-106	6
JUDICIAL RULES	
Fed. R. Civ. P. 12(b)(1).....	i, 1, 3, 8, 11
Fed. R. Evid. 408.....	5
Sup. Ct. R. 13.1	1



PETITION FOR A WRIT OF CERTIORARI

Kenneth Sorak, pro se, respectfully petitions this Court for a writ of certiorari to review the judgment of the Tenth Circuit.



OPINIONS BELOW

The Tenth Circuit's published opinion denying a reversal of the District Courts affirmation of defendants Rule 12(b)(1) Motion to Dismiss based on the Rooker-Feldman Doctrine and the 11th Amendment, *see* App.1a. The District Courts order granting the defendants Rule 12(b)(1) Motion to Dismiss based on the Rooker-Feldman Doctrine and the 11th Amendment, *see* App.5a.



JURISDICTION

The Tenth Circuit entered judgment on December 4, 2024, *see* App.1a. This petition is timely filed pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. § 1254(1).



CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Colorado State Courts are in direct conflict with the rights guaranteed by the U.S. Constitution in the 4th and 14th Amendments.



STATEMENT OF THE CASE

A. Introduction

Petitioner is not an attorney and is asking the U.S. Supreme Court to consider the weight of the arguments presented and a less stringent application¹ of the federal rules regarding procedural standards or formatting errors that may be contained within this petition for Writ of Certiorari. Petitioner is aware of the weight and seriousness of this matter as it is being presented to the highest Court within the United States of America.

B. Summary of Law

The Plaintiff² is asking the U.S. Supreme Court to reverse the Defendants Rule 12(b)(1) Motion to Dismiss that the 10th Circuit affirmed based on the Rooker-Feldman Doctrine and the 11th Amendment. Plaintiff was the respondent in a family law case that the defendants were State Court Judges overseeing the proceedings thereby creating a cause of action pursuant to 42 U.S.C. § 1983 in the form of multiple violations of the Plaintiffs' constitutional rights during case 19DR742 in Douglas County Colorado beginning on November 19, 2019 and resulting in final orders on

¹ *Haines v. Kerner*, 404 U.S. 519 (1972) at 520 states:

We cannot say with assurance that under the allegations of the *pro se* complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, *et passim*.

² The Petitioner hereafter will be referred to as "Plaintiff".

September 15, 2021. As a result of the defendant's actions, the Plaintiff incurred no less than \$800k in damage. Whether it is permissible to deny a litigant's constitutional rights and then use the Rooker-Feldman Doctrine and the 11th Amendment as a basis for the defendant's motion to dismiss to avoid consequences covered under 42 U.S.C. § 1983 is the federal question that was posed to the Federal District Court and then appealed to the 10th Circuit.

C. Background of the Case

Plaintiff filed a motion for spousal support on December 10, 2019. Defendant Bradley denied the Plaintiff their 14th Amendment constitutional right by not sending the litigant notification of a hearing, not allowing the litigant to be heard, but instead issuing a blank order into the record with no signature the same day the motion was filed with the Court for review. This act violated the Plaintiff's 14th Amendment right to due process, the foundation for preservation on appeal, as defined in *Mullane v. Central Hanover Bank*, 339 U.S. 314 (1950)³.

In addition, Plaintiff was given 9 minutes by Defendant Bradley to defend his civil liberties deprived by a civil protection order on December 18, 2019. Plaintiff was accused of placing a digital recorder in his own vehicle. The protected party and petitioner in

³ *Mullane v. Central Hanover Bank*, 339 U.S. 314 (1950) states that a fundamental requirement of due process of law is notice reasonably calculated, under all circumstances, to apprise the parties of the pendency of an action and afford them an opportunity to present their objections. The notice must reasonably convey the required information and must afford a reasonable time for those interested to make their appearance.

the divorce case at that time, Amy Wilson f/k/a Sorak an officer of the Court and further referred to as the opposing party, admitted under oath at the Protection Order hearing to placing the digital recorder in her own glove box with no proof of any recordings to substantiate her claims.

Defendant Cisneros suppressed testimony and exhibits during the final orders hearing as a direct denial of the Plaintiff's 14th Amendment right to due process and equal protection under law which resulted in no preservation on appeal. Defendant Cisneros threatened Plaintiff's attorneys when they tried to correct the record. As a result, no information was preserved for appeal that another Judge could have weighed to make another Judgement. Other violations of Federal Law include Defendant Cisneros allowing opposing party to enter a MOU Settlement Agreement into the record, negotiated in good faith as being confidential and inadmissible in court, in direct violation of FRE/CRE Rule 408 Compromise Offers and Negotiations.

The Colorado Judicial Branch has before it a motion for contempt paused in its third year asking for the return of the Plaintiff's personal property, a remedy for the opposing party ignoring the state courts orders, and the cashing of 4 checks totaling \$9,800.00 made out in whole or part to the Plaintiff endorsed by the opposing party and deposited into her bank accounts. Plaintiff's personal property, acquired over a lifetime, was lost in this process, and allowed to be taken by the opposing party through the State Courts issuing of a permanent civil protection order at the hearing on December 18, 2019.

From the 14th Amendment, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States". The State Courts have an obligation to secure a litigant's constitutional rights, *see Mapp v. Ohio*, 367 U.S. 647 (1961)⁴. The outcome for the Plaintiff has been the seizure of his personal property for over 5 years and accomplished through a stealthy application of Colorado state law C.R.S. 13-14-106 Procedure for permanent civil protection orders, which usurps the Plaintiffs 4th amendment rights.

Opposing party, in multiple violations of state law, used the protection order to harass the Plaintiff with no equal protection under the law pursuant to the 14th Amendment from Defendant Cisneros at subsequent hearings.

The Plaintiff's testimony and exhibits suppressed by Defendant Cisneros at final orders in the state

4 Mapp v. Ohio, 367 U.S. 647 (1961) states:

[C]onstitutional provisions for the security of person and property should be liberally construed . . . It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.

See also, Id. at 647:

[T]he Fourth Amendment . . . put the courts of the United States and Federal officials, in the exercise of their power and authority, under limitations and restraints [and] . . . forever secure[d] the people, their persons, houses, papers and effects against all unreasonable searches and seizures under the guise of law . . . , and the duty of giving to it force and effect is obligatory upon all entrusted under our Federal system with the enforcement of the laws.

case contained proof of perjury, fabrication of evidence, and fraud committed by the opposing party that would have impacted the distribution of assets in final orders. In this action, the Defendants have focused the Federal Courts on the request to transfer the Domestic Relations case into the Federal Court System which was a small portion of the Plaintiffs relief requested predicated on the appearances of impropriety due to the Judicial Officers all knowing the opposing party in the state case, as documented with the Court through a letter entered into the record multiple times from the Attorney of Record in this case. Plaintiff made the Federal District Court aware at the hearing that injunctive and declaratory relief were also being requested. The Order and Judgement issued by the 10th Circuit, *see App.2a*, mentions 4 of the Plaintiffs 6 requests for relief in the original complaint but does not include requests for a jury trial and any and all other relief the Court may deem appropriate⁵. The Federal District Court was made aware but never considered that monetary damage, injunctive and declaratory relief were also being requested as a remedy.

Plaintiff made Defendant Cisneros and the Colorado Judicial Branch aware of the letter from Plaintiff's attorney alleging Defendant Cisneros violations of Federal Law. As a matter of Judicial ethics this memo-

⁵ *Behr*, 8 F.4 1206 at 1214 states:

Rooker-Feldman is not a jurisdictional giant. It is a limited doctrine that applies only when litigants try to appeal state court losses in the lower federal courts. Here, the district court erred by dismissing the Behrs' complaint in one fell swoop without considering whether each individual claim sought "review and rejection" of a state court judgment.

rializes bias, and prejudice that violates the 6th Amendment right to a fair hearing, Judicial Canon, State and Federal Law including 28 U.S.C. § 455 Disqualification of a Judge and 28 U.S.C. § 144 Bias or Prejudice of Judge. The Colorado Appellate Court, Bar and Commission on Judicial Discipline refused to investigate the matter citing Judicial discretion.

The 10th Circuit's order affirming dismissal in 23-cv-2391 should be reversed, and remanded back to the Federal District Court, to move directly to discovery.



REASONS FOR GRANTING THE PETITION

I. There Is Conflict Amongst the Circuit Courts as to Whether There Is Jurisdiction to Hear State Cases at the Federal Level When There Is a Denial of a Litigant's Constitutional Rights Due to the *Rooker-Feldman* Doctrine and the 11th Amendment.

The Defendant's state the *Rooker-Feldman* Doctrine as the basis for the State's Motion to Dismiss pursuant to F.R.C.P. 12(b)(1), *see* App.3a. The 10th Circuit has denied having jurisdiction agreeing with the Defendants Motion to Dismiss, invoking the *Rooker-Feldman* Doctrine, and the 11th Amendment even though significant Federal Case law disagrees with their conclusions, *Ex parte Young*, 209 U.S. 123 (1908)⁶.

⁶ In *Ex parte Young*: 209 U.S. 123 (1908) states:

[W]hen 42 U.S.C. § 1983 creates a cause of action, state officers when charged with violating Federal Law

Federal Courts have Jurisdiction in state cases that involve violations of Federal Law and for non-judicial acts, *see Keith Haywood vs Curtis Drown*, 556 U.S. 729 (2009)⁷.

In addition, U.S. Supreme Court case law provides precedent in that State Courts issuing orders that goes beyond the authority delegated to them, their orders are null and void, *Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 354 (1920)⁸. Plaintiff has asked for review of the state's court order as only a small part of the prayer for relief in the original complaint. These issues are a matter of Constitutional Law enforced at the state level by the U.S. Constitutions Article VI – the Supremacy Clause. The State Courts orders were issued in absence of the litigants' constitutional rights; therefore, those Court orders are not a judicial act because they are in contradiction to the

while in their official capacities cannot rely on sovereign immunity to defeat suits for prospective relief; including declaratory and injunctive.

⁷ *Keith Haywood vs Curtis Drown*, 556 U.S. 729 (2009) states:

In our federal system of government, state as well as federal courts have jurisdiction over suits brought pursuant to 42 U.S.C. § 1983, the statute that creates a remedy for violations of federal rights committed by persons acting under color of state law.

⁸ *Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 354 (1920) states:

Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void, and this even prior to reversal.

judicial duties a Judge normally performs which includes upholding and defending the Constitution. Rooker-Feldman does not apply. Court orders issued in the absence or denial of constitutional rights are null and void even before reversal, *see Valley*, 254 U.S. 354.

Whether the cause of action occurs during a family law case, or any other case litigated in Court within the United States of America, when litigants are denied their 14th Amendment due process rights, it conflicts with Constitutional Law.

The 10th Circuit in their discussion states that the Rooker-Feldman doctrine is a jurisdictional prohibition on lower federal courts exercising appellate jurisdiction over state-court judgments, *see App.3a*. However, two sister Circuit Courts have issued rulings denying Rooker-Feldman as viable arguments for dismissal in Federal Court.

In *Behr*, 8 F.4 1206, the 11th Circuit Judges wrote in their opinion that Rooker-Feldman does not prevent a district court from exercising subject matter jurisdiction because an issue was previously litigated in state court⁹. Instead, it bars cases brought by

⁹ *Behr*, 8 F.4 1206 at 1211 states:

Rooker-Feldman, we now understand, does not prevent a district court from exercising subject-matter jurisdiction simply because a party attempts to litigate in federal court a matter previously litigated in state court.

Nicholson, 558 F.3d at 1274 (quoting *Exxon Mobil*, 544 U.S. at 293) states:

Nor can it be a broad means of dismissing all claims related in one way or another to state court litigation . . . It bars only cases brought by state-court

litigants complaining of injuries caused only by state court judgements. The case being petitioned here by the Plaintiff, the injuries have always been the denial of constitutional rights and not the state court judgment by itself. Whether the application of case law in *Valley*, 254 U.S. 354, is appropriate is a question that would be asked at trial with the district court. Again, Plaintiff is not an attorney *but seeks* preservation of his constitutional rights.

Behr, 8 F.4 1206, discusses Rooker-Feldman's era of expansion is over and almost never applies¹⁰ as a basis for a Rule 12(b)(1) Motion to Dismiss when state court issues are brought before the Federal Courts. They also address injuries from adverse state court orders allowing for some reconsideration due to an independent claim¹¹. Claims are not dismissed because they are inextricably intertwined when those

losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.

Exxon Mobil, 544 U.S. at 284; *see also Nicholson*, 558 F.3d at 1274. "The injury must be caused by the judgment itself. Period."

¹⁰ *Behr*, 8 F.4 1206 at 1208 states: "That doctrine's era of expansion is over.' And goes on to say at 1212 – "In short, district courts should keep one thing in mind when Rooker-Feldman is raised: it will almost never apply."

¹¹ *Behr*, 8 F.4 1206 at 1212 states:

Rooker-Feldman, we emphasized, does not block claims that require some reconsideration of a decision of a state court if the plaintiff presents some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party. *Id.* (quoting *Exxon Mobil*, 544 U.S. at 293).

claims seek consideration beyond review and rejection of a state courts order¹². When applied to the petition before this court, the injury was caused by the defendants' denial of the Plaintiff's constitutional rights and not by the state court orders themselves. *Behr*, 8 F.4 1206, states Federal Courts are permitted to consider whether a litigant's constitutional rights were violated during the proceedings and are entitled to damage for those violations because the claim falls outside Rooker-Feldman's boundaries¹³.

The 10th Circuit in their discussion states that, "Plaintiff argues injuries came not from the state-court judgment itself but from the allegedly unconstitutional processes that produced it", *see App.4a*. Further stating that, "Plaintiff's claims would evaporate if there were no state-court judgment creating the injury. Every claim for relief in the Plaintiff's complaint is predicated on the effect of the state-court judgment and therefore barred by Rooker-Feldman.", *see App.4a*. Plaintiff has

12 *Behr*, 8 F.4 1206 at 1212 states:

Parties keep arguing that district courts should dismiss claims as 'inextricably intertwined' even when those claims do not seek 'review and rejection' of a state court judgment, and district courts keep doing so." *Id.* (quoting *Exxon Mobil*, 544 U.S. at 291).

13 *Behr*, 8 F.4 1206 at 1213 states:

In other words, they are not raising these due process claims so that we can "review and reject" the state court's child custody judgment. That would be a violation of Rooker-Feldman. Instead, they are asking us to consider whether their constitutional rights were violated during the proceedings and whether they are entitled to damage for those violations. That claim falls outside Rooker-Feldman's boundaries.

asked for damage; injunctive and declaratory relief that would not evaporate if there were no injury from a state-court judgment but would instead persist due to the denial of Plaintiff's constitutional rights. Where the 10th Circuit erred was in only considering some of the Plaintiffs requests for relief and not addressing all of them as to whether they were asking for rejection of the state court orders and if Rooker-Feldman applies¹⁴. *Behr*, 8 F.4 1206, allows for some reconsideration of state orders in determining the impact of an independent claim. Plaintiff asks this Court to consider that the Plaintiff and his attorneys should have been allowed to testify in court with respect to his exhibits. That did not occur in this case.

Gibson, No. 22-1757, was a Federal Case out of West Virginia in the 4th circuit; Gibson sued Judge Goldston in Federal Court for violating his constitutional rights while Court proceedings were still pending as his case was a 42 U.S.C. § 1983 claim¹⁵. This is a very similar case in that a family law litigant was

¹⁴ *Behr*, 8 F.4 1206 at 1214 states:

Rooker-Feldman is not a jurisdictional giant. It is a limited doctrine that applies only when litigants try to appeal state court losses in the lower federal courts. Here, the district court erred by dismissing the Behrs' complaint in one fell swoop without considering whether each individual claim sought "review and rejection" of a state court judgment.

¹⁵ *Gibson v. Goldston* No. 22-1757 (4th Cir 2023) at 7 states:

We have jurisdiction over this interlocutory appeal because it concerns a denial of absolute immunity involving an issue that can be resolved purely as a matter of law, citing *Al Shimari v. CACI Intern, Inc.*, 679 F.3d 205, 221-22 (4th Cir. 2012).

denied his 4th and 14th amendment illegal search and seizure and due process protections. This is a Federal Court considering the denial of constitutional rights and punitive damage were being sought as the Judicial Officer in this case was acting under color of law while performing an executive function¹⁶. While the case was heard in the 4th circuit, it still has weight as applicable in the 10th circuit¹⁷. The Plaintiffs petition before this court similarly seeks to resolve an issue purely as a matter of law. *Gibson*, No. 22-1757 at 14, also supports the Plaintiff's request for denial of the defendant's motion to dismiss and denial of Judicial Immunity due to a Judge performing a non-judicial act. All allegations are plausibly supported by factual testimony in Court under oath, Court documents and documented proof from third parties such as financial institutions, and subpoenaed documents, as required for plausibility that the defendants are liable as in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, at 570 (2007).

Plaintiff was denied multiple times, the opportunity to be heard, discovery items were knowingly withheld, exhibits inappropriately admitted and denied against state statutes and Defendant Cisneros' own ground rules forth at the beginning of the hearing on

¹⁶ *Haze v. Harrison*, 961 F.3d 654, 660 (4th Cir. 2020) states:

Qualified immunity shields government officials from liability for civil damage provided that their conduct does not violate clearly established statutory or constitutional rights within the knowledge of a reasonable person.

¹⁷ Case law from one circuit can be used in another circuit- *Ableman v. Booth*, 62 U.S. 506 (1858) and *Howlett v. Rose*, 496 U.S. (356) (1990).

September 9, 2021. Since the Plaintiff was not allowed to be heard, no preservation on appeal was possible as a basis for an appeal in state court. This alone serves as the basis for exclusive jurisdiction of the Federal Courts as it deals with a constitutional question and damage over \$75,000. The Constitutions Article VI – the Supremacy Clause, guarantees that the Constitution and Federal Law are above all State Law and State Constitutions and it applies directly to all Courts. In Article III Section 2 of the U.S. Constitution, Federal Courts can hear all cases, in law and equity, arising under this Constitution, [and] the laws of the United States, as stated in *Osborn v. Bank of the United States*, 22 U.S. 738 (1824). And under 28 U.S.C. § 1331, District Courts have jurisdiction over civil actions arising under the Constitution. Federal Courts have exclusive jurisdiction in this matter. The 14th Amendment provides that no state may deprive a person of life, liberty, or property without due process of law. “Absent an emergency, an individual generally must be provided some kind of process before he is deprived of one of these protected interests.” *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, at 569–70 & n. 7 (1972). The states must follow Constitutional and Federal Law, *Cooper v. Aaron*, 358 U.S. 1 (1958).

II. Claims for Damages Are Not Barred by the 11th Amendment Nor Is It a Basis for Granting Judicial Immunity When State Agents Act Counter to the Constitution.

Both Defendants, Amanda Bradley and Teresa Cisneros, do not qualify for Judicial Immunity and their orders are potentially null and void per U.S. Supreme Court case law, *see Valley*, 254 U.S. 354. Plaintiff is exploring this application of Federal Case law as it supports orders issued in absence of Constitutional Law are non-judicial acts and therefore null and void.

Judicial Acts are appealable and consistent with judicial duties normally performed by Judges in their Judicial Capacity including upholding the U.S. Constitution. Whether an act is judicial “relate[s] to the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge.” *Stump v. Sparkman* (1978), 435 U.S. at 362. And once we consider the functions of the judicial, legislative, and executive branches, it becomes clear that defendants, Cisneros, and Bradley, engaged in acts not normally performed by Judges and in so doing forfeited the protection of Judicial Immunity. The Supreme Court has distinguished judges’ judicial functions, which are protected by judicial immunity, from their “administrative, executive, or legislative functions,” which are not. *Forrester v. White*, 484 U.S. 220 (1988)¹⁸. Judges do not

¹⁸ *Forrester v. White*, 484 U.S. 220 (1988) states:

Judges have long enjoyed absolute immunity from liability in damage for their judicial or adjudicatory acts, primarily in order to protect judicial independence by insulating judges from vexatious actions by disgruntled litigants. Truly judicial acts, however,

normally threaten a litigant or their attorney for exercising their right to be heard in court, exclude a litigant's testimony and exhibits while admitting exhibits and testimony by opposing party given similar circumstances; this would be a violation of the 14th Amendments Due Process and a class of one Equal Protection Claim, *see Village of Willowbrook v. Olech*, 528 U.S. 562 (2000). In Article V of the Constitution, addition and removal of a U.S. citizen's constitutional rights is normally performed by the U.S. Congress as a legislative function, which is further distinction of the non-judicial acts performed by the defendants while acting under color of law, *see Forrester*, 484 U.S. 220. In *Gibson*, No. 22-1757, the 4th Circuit denied Judicial Immunity to West Virginia State Judge Louise Goldston for violating a family court litigants 4th and 14th Amendment rights by conducting an illegal search and seizure of his property, a function normally performed by the executive branch. Judicial Immunity was denied and a settlement of \$200,000 was reached in consideration of punitive damage in November of 2023. This is applicable case law by the 4th circuit which applies to the 10th Circuit as cited in, *see Ableman*, 62 U.S. 506, and *Howlett*, 496 U.S. 356. The 10th Circuits judgement and orders affirming the Federal District Court's order and granting the defendants protection under the 11th Amendment as officers of a state is erroneous, *see Scheuer v. Rhodes*,

must be distinguished from the administrative, legislative, or executive functions that judges may occasionally be assigned by law to perform. It is the nature of the function performed—adjudication—rather than the identity of the actor who performed it—a judge—that determines whether absolute immunity attaches to the act.

416 U.S. 232 (1974)¹⁹. The 10th Circuit mentions in App.2a, that the initial filing of this complaint had the Defendants listed as “in her official capacity”. The statement “official capacity” does not imply judicial capacity any more than acts committed while wearing their Judicial robes under color of law is presumed to be a judicial act. As stated in, *see Forrester*, 484 U.S. 220, it is the nature of the function performed and not the identity of the actor, *i.e.* Judge, that determines whether absolute immunity attaches to the act. These were acts committed under their individual capacity within the definition of “color of law” even though they were in Judicial robes performing in their official function over these proceedings as Judge but the non-judicial acts of denying constitutional rights were clearly as individuals and not within their judicial capacity as normal judicial activities performed by a Judge, specifically upholding the Constitution.

The Court should grant this petition for the following three reasons. The federal courts of appeals are divided on the question presented, the court of appeals decision is incorrect and the case presents an issue of national importance.

¹⁹ The U.S. Supreme Court, in *Scheuer v. Rhodes*, 416 U.S. 232 (1974) states:

when a state officer acts under a state law in a manner violative of the Federal Constitution, [he] comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States.

The federal courts of appeals are divided; this Court's intervention is necessary to resolve a conflict among the Circuit Courts. The 4th and 11th Circuits are taking a significantly different view of what constitutes an actionable application of Rooker-Feldman and 11th Amendment immunities for State agents, a conflict that deserves resolution by this Court. State Judges looking to justify a Motion to Dismiss when denying litigants their constitutional rights and ignoring Federal Law, is counter to the Constitutions Article VI – the Supremacy Clause.

The court of appeals decision is incorrect; the 10th Circuit erroneously applied the Rooker-Feldman Doctrine and allowed state agents to use the 11th Amendment as protection from being held accountable by their constituents. When there are clear violations of constitutional rights, there is cause for concern. The Circuits need guidance regarding how to apply Rooker-Feldman and establish Federal Court jurisdiction over matters of enforcement in State District Courts during instances when there is a denial of a litigant's constitutional rights. Absent this Court's intervention, the 10th Circuit's misapplication of Rooker-Feldman and the 11th Amendment protections means that no Court will review when a State Judges actions are in direct conflict with the U.S. Constitution creating procedural infirmities meant to unfairly deprive the Plaintiff, and potentially other future litigants, relief and a remedy when issuing under color of law a non-judicial act devoid of judicial capacity.

This case presents an issue of national importance; to allow the State Courts to target litigants by denying their constitutional rights, would be to remove any protections a litigant has in a court of law within the

United States. It would be reasonable to believe that the Colorado and other State Courts, now emboldened, would continue to deny those rights and perhaps allow or subject litigants to worse violations as they might perceive there is no consequence for denying constitutional rights and ignoring Federal Law.

Over 50% of marriages end in divorce, many of which are becoming increasingly acrimonious. This petition is of national importance because many citizens are exposed to a family court system that has the potential to issue orders predicated on procedural infirmities that allow denial of constitutional protections. This is an opportunity for the Court to weigh in on that impact at the state level given the limited opportunities a litigant, denied their constitutional rights, might venture to make this Court aware of for review.

In addition, litigants in family court have realized that it is permissible to lie under oath if the outcome justifies the methods used and, in the absence of consequences through Judicial officers, it will continue and get worse. However, there are rules to punish those that seek to circumvent the Constitution and Federal Law. Lying in Court is still perjury; fraud and obstruction of justice are all prosecutable federal offenses. Judges have taken oaths to uphold the U.S. Constitution and Federal Law, follow Judicial Canon, and adhere to the Rules of Professional Conduct for Lawyers as ethical practitioners of the law; these tenets must be continually enforced to ensure the courts are fair and unbiased.



CONCLUSION

To preserve the integrity and dignity of the U.S. Judicial System and the protections of the U.S. Constitution, this Court should grant certiorari to review and then reverse the 10th Circuit's judgement and order affirming the Defendants Motion to Dismiss, and grant moving immediately to discovery in this case or grant such other relief as justice requires.

Respectfully submitted,

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