No. 24-1168

IN THE

Supreme Court of the United States

M.D., BY NEXT FRIEND SARAH R. STUKENBERG, ET AL.,

Petitioners,

v.

GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF TEXAS, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals properly reversed a contempt order imposing criminal sanctions without due process when respondents also had an absolute defense to civil contempt.

2. Whether the court of appeals correctly held that respondents substantially complied with two provisions of an institutional-reform injunction over the Texas foster-care system.

3. Whether the court of appeals properly exercised its discretion in ordering this case reassigned from a district judge who has subsequently taken inactive senior status.

PARTIES TO THE PROCEEDING

The list of parties to the proceeding in the petition is accurate, except that Stephanie Muth, in her official capacity as Commissioner of Texas Department of Family and Protective Services, resigned from that office effective July 31, 2025. Her successor in office is Acting Commissioner Audrey O'Neill, who has been automatically substituted as a respondent under Rule 35.3.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF AUTHORITIES v

INTRODUCTION 1

STATEMENT 2

A. Texas's foster-care system is responsible for children who must be removed from their homes because of abuse or neglect. 2

B. The district court enters a sweeping injunction over Texas's foster-care system, and the Fifth Circuit repeatedly narrows its scope. 4

C. Respondents devote significant efforts and funds to comply with the district court's remedial orders, but it imposes criminal contempt sanctions. 5

D. The Fifth Circuit reverses the contempt order and reassigns the case. 8

REASONS FOR DENYING THE PETITION 11

I. THE FIRST QUESTION PRESENTED IS SPLITLESS, FACTBOUND, AND CORRECTLY DECIDED BELOW. 11

A. The court of appeals' holding that the contempt order imposed criminal sanctions implicates no split and is right on the merits. 12

B. There's no split over whether criminal contempt orders may be reversed when the purported contemnors also have an absolute defense to civil contempt. 15

II. THERE'S NO BASIS TO REVIEW THE FACTBOUND QUESTION OF SUBSTANTIAL COMPLIANCE. 19

A. There's no split over substantial compliance. 20

B. Respondents substantially complied with the orders at issue. 23

C. This is a poor vehicle to address substantial compliance. 25

III. PETITIONERS' REASSIGNMENT QUESTION IS MOOT, SPLITLESS, AND MERITLESS. 26

A. The reassignment issue is moot. 26

B. This case doesn't implicate any split over the reassignment standard. 28

C. The court of appeals properly exercised its discretion in reassigning this case. 31

CONCLUSION 32

TABLE OF AUTHORITIES

Page(s)

Cases

Amgen Inc. v. *Sanofi*,
598 U.S. 594 (2023).....19

Bunting v. *Mellen*,
541 U.S. 1019 (2004).....27

Coleman v. *Newsom*,
131 F.4th 948 (9th Cir. 2025) 22, 23

F.J. Hanshaw Enters., Inc. v.
Emerald River Dev., Inc.,
244 F.3d 1128 (9th Cir. 2001).....15

Fortin v. *Comm'r of Mass. Dep't of*
Pub. Welfare,
692 F.2d 790 (1st Cir. 1982) 22

FTC v. *Kuykendall*,
371 F.3d 745 (2004).....21

FTC v. *Lane Labs-USA, Inc.*,
624 F.3d 575 (3d Cir. 2010) 22

Horne v. *Flores*,
557 U.S. 433 (2009).....24

Int'l Union, United Mine Workers of Am.
v. *Bagwell*,
512 U.S. 821 (1994).....12, 13, 14

Joseph A. ex rel. Wolfe v. *N.M. Dep't of Hum. Servs.*,
69 F.3d 1081 (10th Cir. 1995).....22

Liteky v. *United States*,
510 U.S. 540 (1994).....28, 30

M.D. ex rel. Stukenberg v. *Abbott*,
907 F.3d 237 (5th Cir. 2018).....2, 3, 4

M.D. ex rel. Stukenberg v. *Abbott*,
929 F.3d 272 (5th Cir. 2019).....5

M.D. ex rel. Stukenberg v. *Abbott*,
977 F.3d 479 (5th Cir. 2020).....5

N.Y. State Nat'l Org. for Women v. *Terry*,
159 F.3d 86 (2d Cir. 1998) 16

Nat'l Org. for Women v. *Operation Rescue*,
37 F.3d 646 (D.C. Cir. 1994).....15, 16

Nye v. *United States*,
313 U.S. 33 (1941).....18

Pennhurst State Sch. & Hosp. v. *Halderman*,
465 U.S. 89 (1984).....9, 14

Scanlon v. *Life Ins. Co. of N. Am.*,
81 F.4th 672 (7th Cir. 2023) 27

Spencer v. *Kemna*,
523 U.S. 1 (1998).....27

United States v. *Hernandez*,
604 F.3d 48 (2d Cir. 2010) 32

United States v. *Robin*,
553 F.2d 8 (2d Cir. 1977) 28

United States v. *Sanchez-Gomez*,
584 U.S. 381 (2018).....27

Young v. *Higbee Co.*,
324 U.S. 204 (1945).....24

Rules

S. Ct. R. 14.1.....14

Other Authorities

Child Protective Services,
Statewide Demographics of Children in Conservatorship by Legal Status for Children Age 0-17 (July 2025) 2

DFPS,
Child Protective Services 3

HHSC,
Child Care Regulation 3

Southern District of Texas,
Second Amended Division of Work Order,
No. 2025-10 (June 12, 2025).....11, 27

BRIEF IN OPPOSITION

Respondents respectfully submit this brief in opposition to the petition for a writ of certiorari.

INTRODUCTION

This case is an uncommonly poor candidate for review. It arises in the intensely factbound context of a long-running institutional-reform injunction over the State of Texas's foster-care system. The court of appeals correctly held that the district court erred by imposing criminal contempt sanctions of $100,000 per day—without any of the requisite due process protections—on one of the state officials responsible for managing the State's massive foster-care system. The court held in the alternative that even if the district court had imposed only civil contempt, reversal still would be required because the state officials substantially complied with the orders at issue. The court also properly exercised its supervisory authority in concluding that reassignment was regrettably necessary given the district judge's demonstrated unwillingness to follow appellate mandates and years-long hostility toward the defendant state officials.

All three questions presented are factbound, splitless, and at best seek error correction—but there's no error to correct. Indeed, no court (until the district court below) has ever rejected a substantial-compliance defense on facts like those here, where high levels of aggregate compliance and significant improvements over time amply demonstrate substantial compliance. On top of all that, the third question presented is now moot because the original district judge has assumed inactive senior status and is no longer

hearing cases—so the case would need to be reassigned regardless. What's more, the court of appeals *did* consider waste and duplication (as petitioners say courts should) and its decision is consistent with the recusal standard that petitioners assert courts should apply in the reassignment context. In all events, the court of appeals got the reassignment issue right—carefully combing through the record before exercising its discretion to order reassignment under the extreme circumstances of this case.

Certiorari should be denied.

STATEMENT

A. Texas's foster-care system is responsible for children who must be removed from their homes because of abuse or neglect.

Children enter Texas's foster-care system when it's not safe for them to remain with their parents or legal guardians because of abuse or neglect. *M.D. ex rel. Stukenberg* v. *Abbott* ("*Stukenberg I*"), 907 F.3d 237, 243 (5th Cir. 2018). The State works to reunify those children with their parents or guardians, permanently place them with relatives, or arrange for their adoption. *Ibid.* If those efforts are unsuccessful after eighteen months, the child enters permanent managing conservatorship, and the State becomes the child's legal guardian. *Ibid.* As of July 2025, there were 6,703 children in permanent managing conservatorship in Texas.[1]

[1] Child Protective Services, *Statewide Demographics of Children in Conservatorship by Legal Status for Children Age 0-17* (July 2025), bit.ly/4aBJ7Db.

Children in permanent managing conservatorship are placed in a variety of settings, including foster homes; general residential operations; residential treatment centers, which serve children with severe or special needs; and residences that serve children with intellectual disabilities under Medicaid's Home and Community-Based Services program. *Stukenberg I*, 907 F.3d at 244; Pet. App. 492a-93a.

Two Texas agencies—the Department of Family and Protective Services (DFPS) and the Health and Human Services Commission (HHSC)—play a crucial role in administering the State's foster-care system. All told, they're "responsible for a $2 billion budget, over 29,000 children, and 100,000 facilities." Pet. App. 44a. In general, DFPS is in charge of the day-to-day administration of the foster-care system as it relates to individual children, while HHSC licenses and regulates many of the foster-care placement settings.[2]

Among other responsibilities, both DFPS and HHSC investigate reports that children in their care have been abused or neglected. DFPS conducts the vast majority of these investigations; HHSC conducts the remainder. Compare, *e.g.*, C.A. ROA.45098, with C.A. ROA.48432-35. As relevant here, an investigative division of HHSC called Provider Investigations—which was originally a unit within DFPS—handles a small number of abuse-and-neglect investigations involving children in permanent managing conservatorship housed under the Medicaid program. C.A. ROA.50884; Pet. App. 22a, 491a-92a.

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[2] See, *e.g.*, DFPS, *Child Protective Services*, bit.ly/4blNWl4; HHSC, *Child Care Regulation*, bit.ly/3QIMWiP.

B. The district court enters a sweeping injunction over Texas's foster-care system, and the Fifth Circuit repeatedly narrows its scope.

In 2011, a class of minor children over whom the State has permanent managing conservatorship (petitioners here) sued the Governor of the State of Texas, the Commissioner of DFPS, and the Executive Commissioner of HHSC (respondents), alleging that the State's administration of its foster-care system violated their substantive due process rights to be free from an unreasonable risk of harm. Pet. App. 3a; C.A. ROA.247-48.

In 2018, the district court entered a sweeping permanent injunction "mandating dozens of specific remedial measures" (referred to as "remedial orders") that relate to children in permanent managing conservatorship. *Stukenberg I*, 907 F.3d at 247, 271; see C.A. ROA.22240, 24581-600. The district court also appointed two monitors to track and provide detailed reports on respondents' compliance—at respondents' expense. C.A. ROA.24596-98.

On appeal, the Fifth Circuit held that the injunction and remedial orders were "significantly overbroad." *Stukenberg I*, 907 F.3d at 271. The court of appeals explained that many of the district court's remedial orders went "far 'beyond what [is] minimally required to comport with the Constitution[].'" *Id.* at 272 (citation omitted). Stressing the significant "federalism concerns" implicated by granting a federal court "near-perpetual oversight of an already-complex child-welfare regime," the Fifth Circuit invalidated many of the remedial orders. *Id.* at 271, 273-88 (citations omitted).

On remand, the district court expanded the remedial orders and respondents appealed again. This time, the Fifth Circuit invalidated multiple remedial orders and remanded with express instructions to "begin implementing, without further changes, the modified injunction with the alterations we have made." *M.D. ex rel. Stukenberg* v. *Abbott* ("*Stukenberg II*"), 929 F.3d 272, 281 (5th Cir. 2019).

"Notwithstanding [the Fifth Circuit's] specific instruction not to make 'further changes' to the injunction, the district court did just that" and "ignore[d]" the Fifth Circuit's mandate on remand. *M.D. ex rel. Stukenberg* v. *Abbott* ("*Stukenberg III*"), 977 F.3d 479, 482-83 (5th Cir. 2020). So after yet another appeal, the Fifth Circuit remanded a third time, again instructing the district court to implement the remedial orders "without further changes"—lest "judicial hierarchy" be replaced with "judicial anarchy." *Id.* at 483 (citation omitted).

C. Respondents devote significant efforts and funds to comply with the district court's remedial orders, but it imposes criminal contempt sanctions.

Respondents devoted "significant remedial efforts" and resources to comply with the district court's injunction and sixty-plus remedial orders—spending more than $150 million on compliance efforts (on top of more than $60 million paid directly to the court-appointed monitors). Pet. App. 24a, 46a. According to the monitors, respondents' compliance with many remedial orders exceeded 90 percent. See, *e.g.*, C.A. ROA.51467-76. For other remedial orders, respondents' compliance "significant[ly] improve[d]" over time. Pet. App. 23a.

Despite that success, the district court held respondents in contempt on two prior occasions, in 2019 and 2020. Pet. App. 52a. Then, in early 2023, the district court "urged and instigated" petitioners to seek contempt once again. Pet. App. 27a. Petitioners acceded, accusing respondents of violating certain remedial orders, including (as relevant here) Remedial Orders 3 and 10. C.A. ROA.47769-73.

Remedial Order 3 relates to referrals and investigations of abuse and neglect. It provides in relevant part:

> DFPS shall ensure that reported allegations of child abuse and neglect involving children in the [relevant] class are investigated; commenced and completed on time consistent with the Court's Order; and conducted taking into account at all times the child's safety needs.

C.A. ROA.24582.

Remedial Order 10 relates to the timeline on which respondents complete their abuse-and-neglect investigations. It provides in relevant part:

> DFPS shall *** complete Priority One and Priority Two child abuse and neglect investigations that involve children in the [relevant] class within 30 days of intake, unless an extension has been approved for good cause and documented in the investigative record.

C.A. ROA.24583.

Both remedial orders refer only to "DFPS" because when the district court first entered its injunction, only DFPS handled abuse-and-neglect investigations.

Pet. App. 21a. The order now applies to HHSC as well because the responsibility for handling one subset of those investigations—the ones conducted by Provider Investigations—was transferred from DFPS to HHSC after the injunction was originally entered. *Ibid.*

Four months after an evidentiary hearing, the district court issued an order finding HHSC's Executive Commissioner in contempt of Remedial Orders 3 and 10. Pet. App. 5a. Disregarding evidence from the monitors' reports showing that respondents complied with those orders throughout thousands of investigations, the district court based its contempt finding on just thirty-eight investigations involving thirteen children conducted by HHSC's Provider Investigations. Pet. App. 501a; C.A. ROA.48440.

Regarding Remedial Order 3, the district court ordered HHSC's Executive Commissioner to:

> pay $50,000 per day until HHSC agency leadership certifies that all [Provider Investigations] investigations involving at least one [petitioner] child closed from December 4, 2023 [the first day of the evidentiary hearing] until the date of the State's certification, are substantially compliant with the Remedial Order 3.

Pet. App. 686a-87a.

As for Remedial Order 10, the district court ordered HHSC's Executive Commissioner to:

> pay $50,000 per day until HHSC agency leadership certifies that all open [Provider Investigation] investigations involving at least one

> [petitioner] child are substantially compliant with Remedial Order 10.

Pet. App. 687a.

The district court's $100,000-per-day penalties began accruing immediately. Pet. App. 686a-88a. While the court provided that its penalty would "be suspended upon complete submission" of the court-ordered certifications and related data, the court also stated it would hold a "compliance hearing" on June 26, 2024, and that "absent substantial compliance, any previously abated fines may be reinstated." *Id.* at 688a. The court also "carr[ied] forward" petitioners' motion to place Texas's foster-care system in receivership. *Ibid.*

D. The Fifth Circuit reverses the contempt order and reassigns the case.

Respondents appealed, seeking reversal of the contempt order and requesting reassignment of the case to a different judge. Respondents didn't make that request lightly. But for years, the district judge had repeatedly proven unwilling to comply with the Fifth Circuit's mandates and unable to conceal hostility toward respondents and their counsel. While respondents were and remain committed to their obligations under the remedial orders and to protecting the children in their care, the district judge's conduct had become an insurmountable obstacle to progress. Seeking reassignment was regrettably necessary to ensure a fair and impartial forum.

After granting a stay pending appeal, Pet. App. 6a, the Fifth Circuit reversed the contempt order and ordered the case to be reassigned on remand, *id.* at 47a.

First, the court of appeals held that the district court had impermissibly imposed criminal contempt sanctions without the constitutionally required procedural safeguards. Pet. App. 7a-17a. The sanctions imposed by the district court were punitive and non-purgeable because they "focuse[d]" on whether defendants' "*past* conduct" (before the contempt order) "was in compliance" with Remedial Orders 3 and 10—and "[d]efendants can do nothing to render any already-untimely investigations timely." *Id.* at 9a. The court of appeals rejected petitioners' invitation to affirm the district court's contempt findings and "remand for a non-retrospective, compensatory remedy appropriate to civil contempt" because "the state compellingly defend[ed] its substantial compliance with" the remedial orders. *Id.* at 16a.

Second, the court of appeals held that the contempt order violated state sovereign immunity. Pet. App. 17a-19a. Because the district court's order "award[ed] retroactive monetary relief" against state officials, it was constitutionally barred. *Id.* at 17a (quoting *Pennhurst State Sch. & Hosp.* v. *Halderman*, 465 U.S. 89, 102-03 (1984)).

Third, the court of appeals held in the alternative that respondents had an absolute defense to civil contempt because they substantially complied with Remedial Orders 3 and 10. Pet. App. 19a-23a. The court explained that the "touchstone" of substantial compliance is the "reasonableness of the alleged contemnor's attempts to comply," and that respondents' good faith efforts—which included spending over a hundred million dollars, overhauling internal policies, and seeking

additional assistance from the Texas legislature—bolstered their substantial compliance defense. *Id.* at 20a.

To evaluate substantial compliance, the court "compar[ed]" the extent of compliance with the alleged noncompliance, an approach that "work[ed] well in this case" because "whether compliance was substantial turns in large part on how many subject investigations were compliant and how many" weren't. Pet. App. 20a-21a. The court held that DFPS's and HHSC's compliance had to be assessed in the aggregate given the wording of the remedial orders and history of the agencies. *Id.* at 21a-23a. And it concluded that the agencies' very high levels of aggregate compliance over thousands of abuse-and-neglect investigations and significant improvement in performance over time demonstrated that they substantially complied with the orders at issue. *Id.* at 22a-23a.

Fourth, the court held that its "comprehensive review" of the extensive record in this case—including three previous appeals—compelled reassignment. Pet. App. 23a-47a. The court concluded that under either test the Fifth Circuit uses to evaluate such requests, reassignment was necessary given the district court's "repeated failure to follow" the Fifth Circuit's mandates and "sustained pattern, over the course of months and numerous hearings, of disrespect for [respondents] and their counsel." *Id.* at 25a, 44a. "[W]eigh[ing]" the gains "in preserving the appearance of fairness" against the resulting "waste and duplication" of reassignment and emphasizing the federalism concerns at stake in this institutional-reform case, the court exercised its discretion to order the

case transferred to a different district judge. *Id.* at 44a-47a.

The court of appeals denied petitioners' request for rehearing en banc. Pet. App. 797a. After the case was reassigned, the district judge assumed inactive senior status and is no longer hearing any cases.[3]

REASONS FOR DENYING THE PETITION

I. THE FIRST QUESTION PRESENTED IS SPLITLESS, FACTBOUND, AND CORRECTLY DECIDED BELOW.

Petitioners' first question presented asks the Court to resolve whether courts of appeals should affirm civil contempt sanctions even if the contempt order seemingly also imposed punitive sanctions. Pet. i. That question is unsuitable for review for multiple reasons.

First, the Fifth Circuit's conclusion that the contempt order imposed criminal sanctions doesn't implicate any circuit split and is right on the merits.

Second, there's no split over how courts should treat contempt orders where, as here, criminal and civil contempt are *both* precluded. Indeed, petitioners identify *no* case impugning the propriety of reversing a contempt order under these circumstances—because there is none. The decision below comports with this Court's precedents and is correct besides. Even if

[3] See Southern District of Texas, *Second Amended Division of Work Order*, No. 2025-10 (June 12, 2025), bit.ly/3JkxU1L (listing work-order adjustments "made to reflect the inactive senior status designation of United States District Judge Janis Graham Jack").

there were a conflict (and there is none), this case would be a poor vehicle for resolving it.

A. The court of appeals' holding that the contempt order imposed criminal sanctions implicates no split and is right on the merits.

There's no basis to review the Fifth Circuit's conclusion that the district court's contempt order imposed criminal contempt sanctions without adequate due process because it doesn't implicate any circuit split and is right in all events.

The only split petitioners assert with respect to this issue (at 22-23) is over how courts assess an injunction's complexity under this Court's criminal-contempt rubric in *International Union, United Mine Workers of America* v. *Bagwell*, 512 U.S. 821 (1994). While petitioners rightly concede (at 22) that the district court's "permanent injunction as a whole may be considered complex," they contend that the Seventh and Tenth Circuits would've focused on the complexity of the portions of the injunction involved in the contempt proceeding. But the Fifth Circuit checked that box, too. It held in the alternative that "even if [it] were to circumscribe [its] assessment of the injunction to Remedial Orders 3 and 10, [it] would *still* conclude that the injunction is complex." Pet. App. 11a (emphasis added). So petitioners' supposed conflict is a mirage.

The Fifth Circuit was right on the merits, too. It correctly held that all the indicia of criminal contempt were present under *Bagwell*—the fines under the contempt order were (1) non-compensatory, (2) retrospective, and (3) non-purgeable, in addition to being used

to punish out-of-court conduct that allegedly failed to comply with a complex injunction. 512 U.S. at 829; Pet. App. 7a-13a.

In particular, the court below correctly concluded that the sanctions were retrospective and non-purgeable because the order required HHSC's Executive Commissioner to pay daily fines until the agency certified that completed and pending investigations substantially complied with the district court's remedial orders. Pet. App. 9a-10a. As the court of appeals rightly held, respondents "can do nothing to render any already-untimely investigations timely." *Id.* at 9a. That meant respondents had "no realistic opportunity to purge the contempt," revealing that the contempt order was "at least partially intended to punish [respondents'] 'completed acts of disobedience,' which render[ed] the sanction criminal." *Id.* at 10a.

Petitioners are wrong to argue (at 21) that the Fifth Circuit should've interpreted the sanctions as civil because that was supposedly what the "the district court intended." *Bagwell* makes clear that "the label affixed to a contempt ultimately 'will not be allowed to defeat the applicable protections of federal constitutional law.'" 512 U.S. at 838 (citation omitted). Because the district court's sanctions were punitive in nature, respondents were entitled to—and undisputedly didn't receive—criminal due process protections before those sanctions were imposed.[4]

[4] Petitioners briefly assert (at 21-22) that whether the purported violations occurred out of court is irrelevant. That's wrong, because where the judge has no personal knowledge of an alleged violation of a complex injunction, "elaborate and reliable

Absent any circuit split, petitioners ultimately ask this Court for factbound error correction of the Fifth Circuit's conclusion that the contempt order imposed criminal sanctions. But the court below carefully and correctly applied *Bagwell*'s well-established test to the contempt order's specific language. That court's straightforward analysis is correct and this Court's review is unwarranted.

What's more, this case is a poor vehicle to consider whether the contempt order imposed criminal sanctions because the Fifth Circuit's reversal of the contempt order rests on an alternative, independent ground that petitioners don't challenge. In addition to concluding that the contempt order inflicted criminal sanctions without due process, the Fifth Circuit also held that those sanctions violated state sovereign immunity by "award[ing] retroactive monetary relief" against a state official. Pet. App. 17a-19a (quoting *Pennhurst*, 465 U.S. at 102-03).

While petitioners briefly mention (at 28) sovereign immunity in their petition, that issue isn't fairly included in any of their questions presented. As a result, this Court would have no occasion to disturb the Fifth Circuit's correct conclusion that the district court's contempt order was "unconstitutional in violation of state sovereign immunity," which is an independent basis for the judgment below. Pet. App. 17a; see S. Ct. R. 14.1(a). This Court's review is unwarranted for that reason, too.

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factfinding" is often necessary to evaluate compliance—as was the case here. *Bagwell*, 512 U.S. at 833-34; see Pet. App. 11a.

B. There's no split over whether criminal contempt orders may be reversed when the purported contemnors also have an absolute defense to civil contempt.

There's also no circuit split on whether a court of appeals must affirm portions of a contempt order imposing civil sanctions if the order also impermissibly imposes criminal sanctions. None of the cases petitioners cite addressed a contempt sanction like the one here. Nor has any court partially affirmed a contempt order improperly imposing criminal sanctions while holding that the purported contemnors *also* had an absolute defense to civil contempt.

The court of appeals decisions petitioners invoke (at 27) don't conflict with the decision below because the sanctions imposed in those cases were readily separable into criminal and civil components in a way the sanction here was not.

For example, in *F.J. Hanshaw Enterprises, Inc.* v. *Emerald River Development, Inc.*, 244 F.3d 1128 (9th Cir. 2001), the district court imposed two separate fines against a party that attempted to bribe a receiver: (i) a $500,000 sanction to be paid to the federal government and (ii) a $200,000 surcharge to be paid to the other party. *Id.* at 1131. On appeal, the Ninth Circuit determined that, for due-process purposes, the former payment to the government was criminal and the latter payment to the other party was civil. *Id.* at 1136-42.

Similarly, *National Organization for Women* v. *Operation Rescue*, 37 F.3d 646 (D.C. Cir. 1994), involved several different fines, some of which were par-

tially punitive, while others were wholly compensatory. *Id.* at 660-61. Because the fines were separate, the court of appeals treated them separately, affirming the wholly compensatory fines while vacating the partially punitive fines for reconsideration under *Bagwell*. *Id.* at 661-62.

The fines at issue here weren't neatly separable in the same way. Petitioners suggest (at 24-25) that any punitive aspect of the contempt order could have been avoided by revising it to require HHSC to certify only that investigations closed *after* the contempt hearing were substantially compliant. Even that wouldn't have changed the retrospective nature of the sanction, however, because it would still punish HHSC for investigatory decisions made before the contempt hearing, so long as those investigations had not yet closed at the time of the hearing. Unlike in *F.J. Hanshaw* or *Operation Rescue*, recasting this contempt sanction as civil would've required fundamentally rewriting it. If anything, *Operation Rescue* supports the Fifth Circuit's approach by confirming that "a mixed civil and criminal contempt proceeding must afford the alleged contemnor the protection of criminal procedure." 37 F.3d at 661.[5]

All told, none of the cases petitioners cite (at 24-28) involved a contempt sanction remotely similar to

[5] *New York State National Organization for Women* v. *Terry*, 159 F.3d 86 (2d Cir. 1998), is even more inapposite. See Pet. 27. There the *district court* modified its own previously vacated contempt order to include a purge provision, which changed the nature of the sanctions from criminal to civil, and the Second Circuit affirmed. *Id.* at 92-95. That says nothing about how courts of appeals should evaluate contempt orders imposing criminal sanctions.

the one here. Even the dissent from rehearing en banc doesn't identify any circuit conflict that would warrant this Court's review.

There's also no circuit split because the Fifth Circuit never held that it was forbidden from remanding contempt orders imposing criminal sanctions for the imposition of civil sanctions in appropriate cases. In response to petitioners' request that it affirm the district court's contempt findings and "remand for a nonretrospective, compensatory remedy appropriate to civil contempt," the court of appeals simply stated that its usual "practice" is to "reverse invalid contempt orders"—not that a hard-and-fast rule required that approach. Pet. App. 16a. That petitioners cite (at 24-27) multiple Fifth Circuit decisions on both sides of the supposed split only confirms it isn't genuine.

Indeed, the Fifth Circuit's decision to reverse the contempt order in its entirety rather than remand it for the imposition of a different sanction was contingent on two circumstances not present in any of the circuit cases petitioners cite. First, the court of appeals concluded that "doubt [wa]s cast on any potential remand by the state's argument that the court's [contempt] findings were legally deficient because they were based on violative actions not readily inferable from the terms of Remedial Orders 3 and 10." Pet. App. 16a. Second, the court of appeals held that respondents' substantial compliance with the remedial orders gave them an absolute defense to civil contempt, making any remand futile. *Ibid.* Those specific circumstances led the Fifth Circuit to conclude that the contempt order wasn't "amenable to remand."

Ibid. Petitioners identify no case reaching the opposite conclusion on similar facts. That alone is reason enough to deny review of the first question presented.

On the merits, the Fifth Circuit's approach was correct. Petitioners contend (at 25-26) that the court misinterpreted *Nye*'s rule that "when a contempt order is partially remedial and partially punitive, 'the criminal feature of the order is dominant and fixes its character for purposes of review,'" which petitioners assert is merely a "procedural detail." Pet. 25 (first quoting *Nye* v. *United States*, 313 U.S. 33, 42-43 (1941), then quoting Pet. App. 802a (Higginson, J., dissenting)). That misreads *Nye*. To be sure, *Nye* announced that rule while discussing appellate jurisdiction, 313 U.S. at 42-43, but it nowhere limited the rule's application to that context. In fact, *Nye* itself assessed the entire contempt order as criminal on the merits immediately thereafter and reversed the order in its entirety—despite the fact that the contempt order included compensatory aspects. *Id.* at 42, 44-53. Doing what this Court has done previously can't be error.

In all events, the Fifth Circuit's decision to reverse the contempt order in its entirety instead of remand for the imposition of new sanctions was appropriate under the circumstances. The Fifth Circuit correctly held that remand would be of dubious value given respondents' position that the district court's contempt findings weren't supported by the text of the remedial orders at issue. Pet. App. 16a. The court of appeals also correctly held that remand would be unavailing because respondents had established their substantial compliance. *Ibid.* Under those circumstances, reversal was the only correct answer.

The court of appeals' rationale for reversing the contempt order in its entirety only highlights the significant vehicle problems this petition presents. To reiterate, the court below held *both* that the district court imposed criminal contempt sanctions without due process *and* that respondents had an absolute defense to even civil contempt based on their substantial compliance. Pet. App. 16a, 23a. So even if this Court were to grant the first question presented and conclude that courts must separate the sanctions imposed by a contempt order when assessing whether the order complied with due process (and could do so here), that would have no effect on the judgment unless the Court also granted and agreed with petitioners on their factbound and meritless substantial-compliance question. See Part II, *infra*.

This Court reviews "judgments of the lower courts, not statements in their opinions," *Amgen Inc.* v. *Sanofi*, 598 U.S. 594, 615 (2023), and review of the first question presented alone couldn't alter the judgment below. That alone makes this case an exceptionally poor vehicle for considering that question.

II. THERE'S NO BASIS TO REVIEW THE FACTBOUND QUESTION OF SUBSTANTIAL COMPLIANCE.

Petitioners also ask the Court to resolve a supposed split in how courts assess the substantial-compliance defense to civil contempt. The Court should reject that invitation.

First, no split exists. Petitioners fail to identify a single case that has rejected a substantial-compliance defense on facts even remotely similar to those presented here. Given the highly contextual nature of a substantial-compliance inquiry, petitioners' failure to

demonstrate that another court would reach a different result if faced with these facts confirms that certiorari isn't warranted.

Second, the decision below is correct. The Fifth Circuit rightly assessed compliance with the remedial orders in aggregate and in context—correctly holding that the state agencies' high levels of aggregate compliance and significant improvement over time amply demonstrated substantial compliance.

Third, this case is a poor vehicle to address substantial compliance. Any analysis of that issue will turn on factbound and case-specific considerations about the specific text of the remedial orders at issue, the complex history of the two state agencies involved, and the federalism interests at stake. Those factors make this case unique and would impede the Court from resolving the question presented on grounds broadly applicable to other parties.

A. There's no split over substantial compliance.

Petitioners insist (at 28-34) there are two circuit splits over substantial compliance, but neither is real.

First, petitioners' asserted split (at 29-31) over how to assess substantial compliance in a case involving multiple defendants doesn't withstand scrutiny. The Fifth Circuit's conclusion that compliance should be assessed in the aggregate rested on unique facts that haven't arisen and likely won't arise in other cases. In particular, both Remedial Orders 3 and 10 "referenced only DFPS by name" because "DFPS handled [Provider Investigations] investigations initially, but the responsibility for handling them was moved to

HHSC in 2020"—years after the district court's injunction. Pet. App. 21a. No other court has decided whether co-defendant state agencies that were restructured while operating under an injunction should be considered together or separately for purposes of determining whether they've substantially complied with that injunction, so there's no split on the issue.

The Tenth Circuit's decision in *FTC* v. *Kuykendall*, 371 F.3d 745 (2004) (en banc), isn't to the contrary. In that case, each defendant stipulated to a permanent injunction. *Id.* at 750. By contrast, the remedial orders at issue here are directed at DFPS—not HHSC. Pet. App. 21a-22a. HHSC is obligated to comply with those orders precisely because it *isn't* treated as a separate entity under the injunction. *Ibid.* Moreover, *Kuykendall* didn't involve a substantial-compliance defense and never purported to address how courts should assess such a defense. Contrary to petitioners' assertion (at 30), there's no basis to conclude that this case would have come out any differently in the Tenth Circuit.

The same goes for petitioners' other cases (at 30), none of which addressed similar facts or involved a substantial-compliance defense. Petitioners' argument (at 30) that a split exists merely because those cases analyzed contempt on a defendant-by-defendant basis ignores that the decision below turned on the specific language and unique history of the remedial orders at issue. Pet. App. 21a-22a.

Second, petitioners' purported split (at 32) based on their assertion that the Fifth Circuit didn't require respondents to demonstrate that they had taken "all

reasonable steps" to comply with the remedial orders at issue is illusory.

The Fifth Circuit expressly recognized that "the reasonableness of the alleged contemnor's attempts to comply is the touchstone of a substantial compliance defense." Pet. App. 20a (citation and internal quotation marks omitted). It held that "comparing the extent of a party's compliance with the extent of its noncompliance" "works well in this case because whether compliance was substantial turns in large part on how many subject investigations were compliant and how many were not." *Id.* at 20a-21a.

Like the Fifth Circuit, the other circuits petitioners cite (at 31-33) recognize that substantial compliance is a highly contextual inquiry that doesn't neatly fit into any exact definition. See, *e.g.*, *Coleman* v. *Newsom*, 131 F.4th 948, 958 (9th Cir. 2025); *FTC* v. *Lane Labs-USA, Inc.*, 624 F.3d 575, 591 (3d Cir. 2010) (substantial compliance "will naturally depend upon the unique facts of each case"); *Fortin* v. *Comm'r of Mass. Dep't of Pub. Welfare*, 692 F.2d 790, 795 (1st Cir. 1982) ("'substantiality' must depend on the circumstances of each case"). Minor semantic variations in explaining a term that is "not susceptible of a mathematically precise definition" by any account, *Joseph A. ex rel. Wolfe* v. *N.M. Dep't of Hum. Servs.*, 69 F.3d 1081, 1085 (10th Cir. 1995), do not constitute a genuine split.

Petitioners are equally wrong to argue (at 33-34) that this case would've come out differently under the Ninth Circuit's definition of substantial compliance in *Coleman*. *Coleman*, too, recognized that substantial

compliance is "not amenable to a mathematically precise definition." 131 F.4th at 958 (citation and internal quotation marks omitted). It then concluded that California's vacancy rates for prison mental-healthcare professionals—some of which "never fell below 35 percent"—had "serious and consequential" effects and "did not reflect technical or inadvertent compliance" with a consent decree that required a maximum 10 percent vacancy rate. *Id.* at 959. But having *triple* the amount of staffing vacancies permitted under a decree is a far cry from the facts here, where respondents achieved ninety-five percent compliance with Remedial Order 3 and eighty-four percent compliance with Remedial Order 10 over thousands of investigations. See Pet. App. 22a-23a.

Petitioners' assertion (at 34) that the Fifth Circuit broke from *Coleman* by allegedly giving "no heed to whether Texas took steps to make HHSC investigations compliant" rests on the flawed premise that substantial compliance depends solely on HHSC's investigations—a tiny sliver of the State's abuse-and-neglect investigations. Viewed through the proper lens, the monitors' data shows significant improvement for completed investigations and overall compliance rates of ninety-five and eighty-four percent over "thousands of investigations" conducted by HHSC and DFPS. Pet. App. 22a. Petitioners offer no reason to think any other circuit would deem those efforts anything but substantial compliance.

B. Respondents substantially complied with the orders at issue.

In addition to being splitless, the decision below is correct. Based on the text of the remedial orders and

the history of this case, the court of appeals correctly held that substantial compliance had to be assessed for HHSC and DFPS in the aggregate, and that the agencies' significant efforts and improvement mandated a finding of substantial compliance.

The court correctly held that "the text of the Remedial Orders and the history of these agencies" required HHSC's and DFPS's substantial compliance to be assessed in aggregate. Pet. App. 21a. The remedial orders "referenced only DFPS by name" because, when the orders were issued, only DFPS handled abuse-and-neglect investigations, including those now conducted by HHSC's Provider Investigations division. *Id.* at 21a. Years later, HHSC took responsibility for those investigations, which is the only reason the orders implicate HHSC at all. *Ibid.*

Petitioners provide no valid reason for departing from the Fifth Circuit's approach. "Equity looks to the substance and not merely to the form," *Young* v. *Higbee Co.*, 324 U.S. 204, 209 (1945), and conducting an individualized assessment for HHSC and DFPS under these circumstances would effectively punish the State "when the agency's restructuring was accomplished to improve the policies and practices condemned by the district court," Pet. App. 22a. It would also chill States from advancing policies aimed at reforming critical aspects of government in the future, "interfer[ing] with [the] democratic process" and diminishing the political accountability at the heart of our system of government. *Horne* v. *Flores*, 557 U.S. 433, 448-50, 453 (2009).

Additionally, the Fifth Circuit correctly held that HHSC and DFPS substantially complied with the remedial orders at issue. As the court of appeals explained, the agencies' very high levels of aggregate compliance and significant improvement in performance over time demonstrated that they substantially complied with the orders at issue. Pet. App. 22a-23a. For example, in 2019, soon after the district court's injunction took effect, twenty-one percent of relevant investigations were compliant with Remedial Order 10. *Id.* at 23a. By 2023, compliance had skyrocketed to eighty-four percent. *Ibid.* Compliance under Remedial Order 3 has been consistently high, with the monitors agreeing with the disposition of ninety-five percent of the agencies' investigations across two years of data. *Id.* at 22a-23a.

Respondents' substantial compliance was reinforced by their good faith efforts, including "spen[ding] over a hundred million dollars, overhaul[ing] internal policies, and lobb[ying] for additional assistance from the Texas legislature"—which petitioners don't challenge here. Pet. App. at 20a. Nothing more was required to establish substantial compliance under these circumstances, particularly given the critical federalism interests at stake in federal judicial oversight of an area of core state responsibility.

C. This is a poor vehicle to address substantial compliance.

This case is also a poor vehicle to consider the substantial compliance issue. To reach that issue, the Court would need to wade through complex and fact-bound preliminary questions, such as how Provider

Investigations' transfer from DFPS to HHSC after the injunction was originally entered affected the application of Remedial Orders 3 and 10 and what consequences, if any, that reorganization has on the substantial-compliance analysis. The Court would also need to consider the federalism implications of allowing substantial compliance to turn on agency reorganizations that occur after an institutional-reform injunction is entered. Those case-specific considerations would impede the Court's consideration of the substantial compliance issue and would prevent any decision on that issue from having application beyond this case.

III. PETITIONERS' REASSIGNMENT QUESTION IS MOOT, SPLITLESS, AND MERITLESS.

Petitioners ask the Court to resolve two purported splits over the standard that governs reassignment. That request doesn't get off the blocks because the reassignment issue is moot. After the decision below, the original district judge assumed inactive senior status, so she couldn't preside over this case again regardless of what happens in this Court. Even apart from that fatal flaw, neither purported split is implicated, as the decision below makes clear on its face. What's more, the court below got this issue right on the merits, carefully combing through the extensive trial-court record before regretfully concluding that the original district judge was no longer able to preside over this case with the necessary disinterest and impartiality.

A. The reassignment issue is moot.

The Court should deny review of the reassignment issue because the case can no longer be returned to

the original district judge. Because "there is nothing for [the Court] to remedy, even if [it] were disposed to do so," this issue is moot, and any opinion regarding it would be purely advisory. *Spencer* v. *Kemna*, 523 U.S. 1, 18 (1998).

After the Fifth Circuit issued its mandate, the case was reassigned to Chief Judge Randy Crane of the Southern District of Texas. See Minute Entry, *M.D. ex rel. Stukenberg* v. *Abbott*, No. 2:11-cv-84 (S.D. Tex. Mar. 4, 2025). Meanwhile, the original district judge transitioned from active senior status to inactive senior status. See Southern District of Texas, *Second Amended Division of Work Order*, *supra*. As a result, she is no longer presiding over any cases. See *ibid.*; see also *Scanlon* v. *Life Ins. Co. of N. Am.*, 81 F.4th 672, 681 (7th Cir. 2023) (once judges take senior inactive status, their cases are reassigned in the normal course). So there would be no way to return the case to the original district judge regardless of the Court's resolution of this issue.

The lack of any remaining live controversy over reassignment cuts decisively against certiorari. See, *e.g.*, *Bunting* v. *Mellen*, 541 U.S. 1019, 1020-21 (2004) (Stevens, J., respecting the denial of certiorari). Moreover, no exception to mootness applies here because petitioners have no "reasonable expectation" that their case will be subject to reassignment again or that the reassignment issue will evade review in other cases. See *United States* v. *Sanchez-Gomez*, 584 U.S. 381, 391 (2018). The Court should decline to review this moot issue.

B. This case doesn't implicate any split over the reassignment standard.

Petitioners ask this Court (at 35-40) to resolve two purported splits: (1) whether courts weighing reassignment should consider only impartiality and its appearance or if they should also consider waste and duplication, and (2) whether *Liteky* v. *United States*, 510 U.S. 540 (1994), governs the impartiality analysis for reassignment. But the decision below doesn't implicate any split over either question.

First, petitioners' asserted split over whether courts should consider waste and duplication before ordering reassignment isn't implicated because—as petitioners concede (at 37)—the court below *did* consider that factor.

Petitioners contend that, in considering reassignment requests, some circuits apply a three-factor test: (1) whether the judge can reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind previously expressed, erroneous views; (2) whether reassignment is advisable to preserve the appearance of justice; and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness. Pet. 35-36 (citing *United States* v. *Robin*, 553 F.2d 8, 10 (2d Cir. 1977) (en banc)). According to petitioners (at 37), the Third and D.C. Circuits apply a different test that doesn't consider the third factor of waste and duplication.

That purported split is irrelevant, however, because the court below held that *both* tests required reassignment here. Pet. App. 24a-25a. In reaching that conclusion, the court of appeals expressly "weigh[ed]

any 'gain in preserving the appearance of fairness' against any 'waste and duplication'" caused by reassignment—just as petitioners contend courts should. *Id.* at 44a (citation omitted). There's no reason for this Court to take up a purported split in a case where petitioners already received the benefit of the approach they favor.

Given petitioners' concession that the court below applied the correct test for reassignment, their argument for certiorari boils down to a gripe (at 37) that the court of appeals misapplied that test by "not properly weigh[ing]" the waste-and-duplication factor. But that concededly factbound question isn't appropriate for this Court's review—especially given that the Fifth Circuit's evaluation of the waste-and-duplication factor involved weighing the case's complexity against numerous discrete episodes of judicial antagonism over the case's decade-plus history. See Pet. App. 44a-47a.

The Fifth Circuit noted, for example, that the district judge threatened respondents' counsel with Rule 11 sanctions for objecting to the monitors' findings, Pet. App. 31a-32a, and voiced inappropriate and personal criticism of the defendant executive state officials, such as "there are people in your departments * * * that have a higher concern about these children than either of you do, evidently," "I don't know how you all sleep nights," and "have you no shame," *id.* at 40a. The highly contextual inquiry of weighing the case's complexity against those and similar episodes doesn't warrant this Court's review.

Second, petitioners' asserted split over whether *Liteky* governs in the reassignment context isn't implicated, either. *Liteky* involved the judicial recusal statute. 510 U.S. at 541. It held that judicial rulings alone rarely support recusal and that opinions formed by a judge based on events during proceedings aren't grounds for recusal unless the judge displays a degree of favoritism or antagonism that would make fair judgment impossible. *Id.* at 550-51.

Petitioners contend (at 40) that the First and D.C. Circuits apply *Liteky* to reassignment requests, but the Fifth Circuit didn't. That purported split is illusory. As petitioners acknowledge (at 41), the Fifth Circuit expressly relied on *Liteky* for the proposition that "'judicial rulings alone almost never constitute a valid basis' for finding bias or partiality." Pet. App. 25a (citation omitted).

Moreover, to the extent *Liteky* requires courts to assess whether a district court's displeasure with a party reflects antagonism that "display[s] clear inability to render fair judgment," 510 U.S. at 551, the Fifth Circuit did just that. It recounted numerous examples of the district judge's intemperate behavior, including musing about how the judge could "subject" the HHSC and DFPS commissioners to "tasering" and "handcuffs" or "sentence" them to "cheap motels, where they can live off of McDonald's," Pet. App. 41a-42a; commenting that the judge could sanction respondents to pay money into a trust established by petitioners' counsel and made available for the court's own disposal so that the court could achieve remedial measures rejected by the Fifth Circuit, *id.* at 18a, 34a-35a; and asking the defendant executive state officials

if they had "ever seen the inside of a jail cell," *id.* at 41a.

The Fifth Circuit's determination that the district court's "personal[] involve[ment]" and the proceedings' "adversarial nature" "compel[led] bringing this case before a more disinterested tribunal," Pet. App. 45a, matches the *Liteky* inquiry in substance, so it doesn't implicate any split over the application of that decision in the reassignment context. Petitioners' assertion to the contrary amounts to a request for error correction that provides no sound basis for this Court's review—especially given that there's no error to correct.

C. The court of appeals properly exercised its discretion in reassigning this case.

The reassignment issue is both splitless and meritless. The court of appeals recognized that "[r]eassignment 'is an extraordinary power and should rarely be invoked'" and did "not lightly transfer oversight of the [district] court's remedial decree to another federal judge given the complexity of the case." Pet. App. 23a, 44a (citation omitted).

Instead, the court below "carefully considered the record and the applicable law before concluding that this case must be reassigned to another judge." Pet. App. 23a. It acknowledged that the district judge was "intimately familiar with the course of proceedings and the scope of the demands placed upon state agencies," but regretfully concluded that the extensive catalogue of troubling episodes necessitated reassignment. *Id.* at 44a-45a.

The court of appeals also properly concluded the threat of "further contempt orders or that the foster

care system will be placed in receivership" reinforced the need for reassignment, particularly in light of the critical federalism interests at stake in cases involving institutional-reform injunctions. Pet. App. 45a-47a. That was an appropriate exercise of the court's "considerable discretion" to order reassignment under the extreme circumstances of this case. *United States* v. *Hernandez*, 604 F.3d 48, 55 (2d Cir. 2010).

CONCLUSION

The petition should be denied.

Respectfully submitted.

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August 27, 2025