No. 24-495

# In the Supreme Court of the United States

LEBENE KONAN, PETITIONER

*v.*

UNITED STATES POSTAL SERVICE, ET AL.

*ON CONDITIONAL CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

## BRIEF FOR THE CROSS-RESPONDENTS IN OPPOSITION

SARAH M. HARRIS
*Acting Solicitor General*
*Counsel of Record*
YAAKOV M. ROTH
*Acting Assistant Attorney General*
GERARD SINZDAK
URJA MITTAL
*Attorneys*

*Department of Justice*
*Washington, D.C. 20530-0001*
*SupremeCtBriefs@usdoj.gov*
*(202) 514-2217*

## QUESTION PRESENTED

In 42 U.S.C. 1985(3), Congress created a cause of action against "two or more persons in any State or Territory" who "conspire * * * for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws." The question presented is:

Whether Section 1985(3) can apply to an alleged conspiracy between two employees of the same Executive Branch entity.

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## OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-13a)[1] is reported at 96 F.4th 799. The memorandum opinion and order of the district court (Pet. App. 14a-35a) is reported at 652 F. Supp. 3d 721.

## JURISDICTION

The judgment of the court of appeals was entered on March 20, 2024. A petition for rehearing was denied on June 4, 2024 (Pet. App. 36a-37a). On August 26, 2024, Justice Alito extended the time within which to file a petition for a writ of certiorari in No. 24-351 to and including October 2, 2024. The petition for a writ of certiorari in No. 24-351 was filed on September 27, 2024. The

[1] All references in this brief to the petition appendix are to the petition appendix in No. 24-351.

conditional cross-petition for a writ of certiorari in No. 24-495 was filed on October 28, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

**STATEMENT**

1. Cross-petitioner "owns several properties"—including two properties in Euless, Texas at issue in this case—where she rents rooms to individual tenants. Pet. App. 39a; see *id.* at 41a. Cross-petitioner alleges that United States Postal Service (USPS) employees conspired to intentionally refuse to deliver mail to those two properties. *Id.* at 46a.[2]

The two rental properties each had an assigned post office box in a structure in the neighborhood that contained a number of such boxes. Pet. App. 41a. Cross-petitioner could access the post office box with a key, and her practice was to collect the mail from the box each day and distribute it to the tenants living at each property. *Ibid.* Cross-petitioner also had her own business mail delivered to one of the properties. *Id.* at 41a-42a. Cross-petitioner did not live at either property, though she stayed at them "[f]rom time to time." *Id.* at 41a.

Cross-petitioner alleges that a USPS mail carrier named Raymond Rojas changed the designated owner of one of the properties to a white man, Ian Harvey, who lived at the property. Pet. App. 42a. Rojas also allegedly issued a new lock approval for the post office box so that the lock could be changed and only Harvey could access it. *Ibid.* Cross-petitioner's amended complaint

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[2] Because this case arises on a motion to dismiss, cross-respondents have not yet had a chance to contest cross-petitioner's allegations, which must be taken as true at this stage. See, *e.g.*, *National Rifle Ass'n* v. *Vullo*, 602 U.S. 175, 181 (2024).

does not address whether Harvey had told Rojas that he owned the property.

Cross-petitioner alleges that Rojas "[a]pparently" engaged in the relevant conduct because he "did not like the fact that [cross-petitioner], an African-American woman, owned the" property and "leased rooms" there "to white people." Pet. App. 43a. Cross-petitioner also alleges that "[o]n information and belief," Rojas "has not unilaterally changed the lock on any other residence owner's address on his route; nor has he refused to deliver mail to residences owned by white people." *Ibid.* According to cross-petitioner, "Rojas singled [her] out for discriminatory treatment because she is a successful African American woman and Rojas is not happy about the fact that she owns Residences that he is required to service." *Ibid.*

Cross-petitioner alleges that she subsequently went to her local post office to inquire about the new lock on the post office box. Pet. App. 43a. Cross-petitioner alleges that, while at the post office, "[s]he was asked to confirm her identity, to explain who the actual owner of the Residence was and to provide information as to when she bought the Residence." *Ibid.* Cross-petitioner claims that "[n]o white person is subjected to that type of treatment." *Ibid.*

A USPS employee allegedly informed cross-petitioner that USPS would not deliver mail to the property until it had investigated the property's ownership and determined the correct owner. Pet. App. 44a. USPS allegedly did not deliver mail to the property for the next two to three months, which allegedly "forced" several tenants to move to different locations during that time. *Ibid.* Cross-petitioner alleges that she lost rental income because those tenants moved away. *Ibid.*

Cross-petitioner alleges that USPS subsequently confirmed her ownership of the property and that mail service temporarily resumed. Pet. App. 44a. Cross-petitioner alleges, however, that the local postmaster, Jason Drake, then directed USPS employees not to deliver any mail to cross-petitioner's property unless the individuals to whom the mail was addressed first provided proof that they lived there. *Id.* at 45a. Cross-petitioner alleges that Rojas then "unilaterally decid[ed] which items of mail addressed" to the properties "he would deliver" and "which items he would simply refuse to deliver and improperly mark as 'undeliverable.'" *Ibid.* Rojas allegedly "return[ed]" the undeliverable "mail to the Euless Post Office." *Id.* at 45a-46a. According to cross-petitioner, "Postmaster Drake knows all about Rojas's misconduct, but encourages and approves of it." *Id.* at 46a.

Cross-petitioner alleges that Rojas's and Drake's "misconduct" is "attributable to a single factor: They do not like the idea that a black person owns the Residences, and leases rooms in the Residences to white people." Pet. App. 46a. Cross-petitioner alleges that, "[o]n information and belief, mailman Rojas drew the conclusion that something fraudulent or nefarious was taking place at the Residences because [cross-petitioner] is Black," and "Rojas is backed in his assessment by" Drake. *Id.* at 49a. Rojas allegedly "does not treat any other person in the neighborhood the way he treats [cross-petitioner]" and "delivers mail addressed to residences owned by white people without exception." *Ibid.*

Cross-petitioner alleges that "[i]mportant mail" addressed to cross-petitioner and her tenants was "marked 'undeliverable,'" including "doctor's bills, medications,

credit card statements, car titles and property tax statements." Pet. App. 45a. Cross-petitioner alleges that she informed USPS of the problems with her mail service and that USPS did not "tak[e] any corrective action." *Id.* at 47a.

Cross-petitioner alleges that she eventually "ask[ed] that all mail addressed to [one of the properties] be held at the [local] Post Office." Pet. App. 49a. She alleges that USPS employees did not give her that mail "unless and until she supplied the personal ID's of each person living at the [property] to whom the mail was addressed." *Id.* at 50a.

2. Cross-petitioner filed this suit against USPS, the United States, Drake, and Rojas in the United States District Court for the Northern District of Texas. Pet. App. 39a. She filed an initial complaint, followed by an amended complaint shortly thereafter, which contains essentially the same factual allegations as the initial complaint. See D. Ct. Doc. 1 (Jan. 21, 2022). As relevant here, cross-petitioner asserts that Drake and Rojas conspired to deny her equal protection of the laws, in violation of 42 U.S.C. 1981 and 1985(3). Pet. App. 62a-63a.[3]

The district court granted cross-respondents' motion to dismiss cross-petitioner's Section 1981 and 1985(3) claims. Pet. App. 14a-35a. The court first held that

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[3] Cross-petitioner also asserted tort claims under the Federal Tort Claims Act (FTCA), ch. 753, 60 Stat. 842 (28 U.S.C. 1346(b), 2671 *et seq.*), against USPS and the United States. Pet. App. 56a-62a. The government has contended that there is no subject-matter jurisdiction over those claims under the FTCA, because they "aris[e] out of the loss, miscarriage, or negligent transmission of letters or postal matter." 28 U.S.C. 2680(b). That question is the subject of the government's petition for a writ of certiorari in No. 24-351.

cross-petitioner "fail[ed] to state a claim under Section 1981." *Id.* at 32a. The court observed that Section 1981 bars only discrimination "under color of State law." 42 U.S.C. 1981(c); see Pet. App. 30a. The court concluded that cross-petitioner "does not satisfy the 'under color of State law' requirement of a Section 1981 claim because, as she concedes in the First Amendment Complaint, [Drake and Rojas] were acting in their capacity as USPS employees, under color of *federal* law." Pet. App. 30a.

The district court held that cross-petitioner's Section 1985 claim "similarly fails." Pet. App. 32a. The court explained that the Fifth Circuit has "held that Section 1985(3) is inapplicable to federal actors" like Drake and Rojas. *Ibid.* (citing *Mack* v. *Alexander*, 575 F.2d 488, 489 (5th Cir. 1978) (per curiam)).

The district court further reasoned that "[e]ven if Section 1985(3) did apply to federal actors," cross-petitioner's claim would "fail[] under the well-established intracorporate-conspiracy doctrine, which precludes plaintiffs from bringing conspiracy claims under Section 1985(3) against multiple defendants employed by the same governmental entity." Pet. App. 33a. "According to Fifth Circuit precedent," the court explained, "a governmental entity and its employees constitute 'a "single legal entity which is incapable of conspiring with itself."'" *Ibid.* (citation omitted). And because Drake and Rojas "are both employees of USPS," the court concluded that cross-petitioner "cannot meet the Section 1985(3) requirement that the alleged conspiracy involve 'two or more persons.'" *Ibid.* (citation omitted).

3. The court of appeals affirmed in relevant part. Pet. App. 1a-13a. The court first held that cross-petitioner had failed "to state a viable equal protection

claim" under Section 1981. *Id.* at 10a. The court explained that to succeed on a Section 1981 claim, a plaintiff must establish, *inter alia*, "an intent to discriminate on the basis of race by the defendant." *Ibid.* (citation omitted). The court determined that cross-petitioner had not satisfied that element because "no facts support her assertion that Rojas and Drake continued to deliver mail to any similarly situated white property owners while denying her delivery of mail." *Id.* at 11a. Accordingly, the court concluded that cross-petitioner "fails to state a § 1981 claim, and she does not explain how amending the complaint would address the deficiencies in her argument." *Ibid.*

The court of appeals also rejected cross-petitioner's Section 1985(3) claim. Pet. App. 11a-13a. The court observed that it "ha[s] consistently held that § 1985(3) does not apply to federal actors." *Id.* at 11a (citing *Mack*, 575 F.2d at 489). And the court additionally determined that "even if § 1985(3) applied to federal actors," cross-petitioner's "claim is barred by the 'intracorporate-conspiracy doctrine.'" *Id.* at 12a. The court reasoned that under Fifth Circuit precedent, "an agency and its employees are a 'single legal entity which is incapable of conspiring with itself.'" *Ibid.* (citation omitted). The court thus held that cross-petitioner's Section 1985(3) claim "fail[s]." *Id.* at 13a.

4. Cross-petitioner did not file a petition seeking en banc review of the panel's decision rejecting her Section 1981 and 1985(3) claims.

## ARGUMENT

The Court should deny the cross-petition because cross-petitioner's Section 1985(3) claim cannot proceed regardless of how the questions presented in the cross-petition are resolved. In any event, cross-petitioner

errs in asserting that two employees of the same Executive Branch entity may be held liable for a conspiracy under Section 1985(3). And she alleges no circuit conflict that warrants review in this case.

1. This Court should deny review because resolution of the questions presented in the cross-petition is immaterial to the outcome of this case. Cross-petitioner's Section 1985(3) claim cannot proceed regardless of whether Section 1985(3) can otherwise apply to conspiracies between two employees of the same Executive Branch entity.

a. The court of appeals concluded—in a part of its opinion that cross-petitioner does not challenge—that cross-petitioner failed to allege a necessary element of her Section 1985(3) claim. That independent holding bars cross-petitioner's Section 1985(3) claim and provides a sufficient basis for this Court to deny review.

Section 1985(3) grants a cause of action to persons who are denied "equal protection of the laws" by "two or more persons" who "conspire * * * for the purpose of" effectuating that denial. 42 U.S.C. 1985(3). Thus, "[t]o state a claim under § 1985(3), a plaintiff must allege facts demonstrating," *inter alia*, "a conspiracy * * * for the purpose of depriving a person of the equal protection of the laws." *Jackson* v. *City of Hearne*, 959 F.3d 194, 200 (5th Cir. 2020) (quoting *Lockett* v. *New Orleans City*, 607 F.3d 992, 1002 (5th Cir.) (per curiam), cert. denied, 562 U.S. 1003 (2010)). And to plausibly claim a denial of equal protection, a plaintiff must "allege disparate treatment of similarly situated persons." *Id.* at 201; see *United States* v. *Armstrong*, 517 U.S. 456, 465 (1996) (explaining that "[t]o establish a discriminatory effect in a race case, the claimant must show that

similarly situated individuals of a different race were" treated more favorably).

Here, the Fifth Circuit has already determined that "no facts support [cross-petitioner's] assertion that Rojas and Drake continued to deliver mail to any similarly situated white property owners while denying her delivery of mail." Pet. App. 11a. The court thus concluded that cross-petitioner has failed to plausibly allege "an intent to discriminate on the basis of race" by Rojas and Drake. *Id.* at 10a (citation omitted). The cross-petition does not challenge that conclusion. Thus, regardless of how the questions presented in the cross-petition might ultimately be resolved, cross-petitioner's Section 1985(3) claim cannot proceed.

To be sure, the court of appeals was discussing cross-petitioner's Section 1981 claim when it reached the conclusion that "no facts" in the amended complaint plausibly suggest disparate treatment. Pet. App. 11a. But the same "disparate treatment" element applies equally to both Section 1985(3) claims and Section 1981 claims. *Jackson*, 959 F.3d at 201 (Section 1985(3)); see, *e.g.*, *Abdallah* v. *Mesa Air Grp., Inc.*, 83 F.4th 1006, 1013 (5th Cir. 2023) (Section 1981). The court thus analyzed those "equal protection claim[s]" together in one section of its opinion. Pet. App. 10a. And cross-petitioner pled the claims together as Count V of her amended complaint. *Id.* at 62a-63a; *id.* at 62a ("Denial of Equal Protection"). As a result, cross-petitioner's Section 1985(3) claim is independently foreclosed by the court's determination that "no facts" in the amended complaint plausibly suggest disparate treatment. *Id.* at 11a.

Cross-petitioner acknowledges (Cross-Pet. 27) the Fifth Circuit's holding that "she had insufficiently alleged that Rojas and Drake continued to deliver mail to

similarly situated white property owners." And she does not dispute (*ibid.*) that this "conclusion" applies equally to her "Section 1985(3) claim." But she contends (*ibid.*) that even if that is so, "it would justify only dismissal with leave to amend, not dismissal with prejudice."

The Fifth Circuit already rejected that contention. After concluding that "no facts" in the amended complaint plausibly suggest disparate treatment, the court of appeals affirmed the district court's dismissal with prejudice. Pet. App. 11a; see *id.* at 13a. And the court emphasized that cross-petitioner "does not explain how amending the complaint [again] would address the deficiencies in her argument." *Id.* at 11a. Cross-petitioner now asserts (Cross-Pet. 27) that she "could add more identifying details" to flesh out her cursory disparate-treatment allegation. But she failed to do so in two complaints filed in the district court and in her Fifth Circuit briefing, so there is no basis to think that she could succeed on remand. In any event, the Fifth Circuit expressly rejected the possibility of cross-petitioner "amending the complaint" an additional time; and nothing suggests that the court would reconsider that position. Pet. App. 11a.

Thus, cross-petitioner's Section 1985(3) claim cannot proceed in light of the Fifth Circuit's determinations that (i) cross-petitioner failed to adequately allege facts suggesting disparate treatment and (ii) that failure could not be cured through an amended complaint. Because the questions presented in the cross-petition are academic in the context of this case, the Court should deny review. See *Supervisors* v. *Stanley*, 105 U.S. 305, 311 (1882) (explaining that this Court does not grant a writ of certiorari to "decide abstract questions of law

* * * which, if decided either way, affect no right" of the parties).

b. Even beyond cross-petitioner's failure to adequately allege disparate treatment, there are two other independent reasons why her Section 1985(3) claim was properly dismissed.

First, cross-petitioner has not plausibly alleged that the asserted conspiracy between Drake and Rojas was motivated by "a racially based animus," which is an additional element of a Section 1985(3) claim. *Lockett*, 607 F.3d at 1002; see *Cantú* v. *Moody*, 933 F.3d 414, 419 (5th Cir. 2019), cert. denied, 141 S. Ct. 112 (2020); Gov't C.A. Br. 36-37 (raising this argument). Cross-petitioner has instead offered only conclusory allegations that do not "plausibly suggest [a] discriminatory state of mind." *Ashcroft* v. *Iqbal*, 556 U.S. 662, 683 (2009). Indeed, her racial-animus assertion rests principally on the unsupported allegation that "[a]pparently, Rojas the mail carrier did not like the fact that [cross-petitioner], an African-American woman, owned the Saratoga Residence and leased rooms * * * to white people." Pet. App. 43a; see *id.* at 49a ("On information and belief, mailman Rojas drew the conclusion that something fraudulent or nefarious was taking place at the Residences [cross-petitioner owned] because [cross-petitioner] is black.").

Second, and in any event, qualified immunity would preclude liability here. See Gov't C.A. Br. 42-45 (raising this argument). "[Q]ualified immunity protects 'all but the plainly incompetent or those who knowingly violate the law.'" *Ziglar* v. *Abbasi*, 582 U.S. 120, 152 (2017) (citation omitted). In *Abassi*, the Court held that qualified immunity precluded liability for a Section 1985(3) claim alleging that "two agents of the same" Executive Branch entity "ma[d]e an agreement" to discriminate "in the

course of their official duties." *Id.* at 153. The Court explained that because the acts of employees "of the same legal entity" are normally "attributed to their principal," it "follows that there has not been an agreement between two or more separate people." *Ibid.* The Court also emphasized that "there are other sound reasons to conclude that conversations and agreements between and among federal officials in the same Department should not be the subject of a private cause of action for damages under § 1985(3)." *Id.* at 154. Because of those considerations, the Court concluded that federal officials "could not be certain that § 1985(3) was applicable to their discussions and actions" and thus were "entitled to qualified immunity." *Id.* at 155. The same logic applies here and forecloses any potential liability for Drake and Rojas.

2. As just explained, this Court's review is unwarranted because cross-petitioner's Section 1985(3) claim fails for multiple reasons that are independent of the questions presented in the cross-petition. In any event, cross-petitioner errs in asserting that two officials of the same Executive Branch entity may be held liable for a conspiracy under Section 1985(3).[4]

As noted above, Section 1985(3) provides a cause of action against "two or more persons in any State or Territory" who "conspire * * * for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws." 42 U.S.C. 1985(3). Federal officials are of course "persons." But where those officials serve in the same Executive Branch entity, "as a practical and legal matter" their conduct is normally "attributed to their principal"—*i.e.*,

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[4] The Postal Service is an "independent establishment of the executive branch." 39 U.S.C. 201.

the government entity. *Abbasi*, 582 U.S. at 153. Thus, when such officials "make an agreement in the course of their official duties," *ibid.*, it is questionable whether that agreement could constitute a "conspir[acy]" between "two or more persons," 42 U.S.C. 1985(3).

There are "sound reasons to conclude" that Congress did not intend the term "conspir[acy]" in Section 1985(3) to cover "agreements between and among federal officials in the same Department." *Abbasi*, 582 U.S. at 154; 42 U.S.C. 1985(3). Because "a conspiracy" is an element of a Section 1985(3) claim, *United Bhd. of Carpenters & Joiners* v. *Scott*, 463 U.S. 825, 828 (1983), a Section 1985(3) claim "against federal officials by necessity implicates the substance of their official discussions," *Abbasi*, 582 U.S. at 154. But "open discussion among federal officers is to be encouraged, so that they can reach consensus on the policies a department of the Federal Government should pursue." *Ibid.* If those discussions were "to be the basis for private suits seeking damages against the officials as individuals, the result would be to chill the interchange and discourse that is necessary for the adoption and implementation of governmental policies." *Ibid.* Nothing in Section 1985(3)'s text or history suggests that Congress intended to license lawsuits that would stifle internal Executive Branch communications. See *Cheney* v. *United States Dist. Ct. for D.C.*, 542 U.S. 367, 385 (2004) (emphasizing that "special considerations control when the Executive Branch's interests in maintaining the autonomy of its office and safeguarding the confidentiality of its communications are implicated").

That conclusion is not undermined by the absence of an "under-color-of-state-law requirement in the text of Section 1985." Cross-Pet. 13. Such a requirement—like

the one in 42 U.S.C. 1983—would categorically exclude *all* federal officials from Section 1985(3)'s scope. By omitting such a requirement, Congress allowed the possibility of claims alleging that a federal official conspired with a private actor to deny a plaintiff equal protection of the laws. But that does not mean that Congress also allowed claims alleging that two officials from the same Executive Branch entity conspired with one another in the course of their official duties.

Similarly, as cross-petitioners observe (Cross-Pet. 15), *Abbasi* does not hold that Section 1985(3) "categorically exempts federal actors from liability." But before rejecting the plaintiffs' claims on qualified-immunity grounds, the Court there did expressly "suggest" that multiple Executive Branch officials "employed by the same governmental department do not conspire when they speak to one another and work together in their official capacities." *Abbasi*, 582 U.S. at 155. And that is cross-respondents' position here.

Cross-respondents' position is also consistent with this Court's decision in *Griffin* v. *Breckenridge*, 403 U.S. 88 (1971). See Cross-Pet. 14 (relying on *Griffin*). There, the Court held that Section 1985(3) may extend to "private conspiracies" that satisfy the other statutory prerequisites. *Griffin*, 403 U.S. at 101. But the Court did not address alleged conspiracies between two officials of the same Executive Branch entity.

Finally, this case does not implicate cross-petitioner's broader critiques (Cross-Pet. 21-26) of the intracorporate conspiracy doctrine. That doctrine "turns on specific antitrust objectives," *Cedric Kushner Promotions, Ltd.* v. *King*, 533 U.S. 158, 166 (2001), and this Court has not applied it outside of that context, see *Copperweld Corp.* v. *Independence Tube Corp.*, 467 U.S. 752 (1984).

But even if that doctrine has no application to Section 1985(3), that does not mean that liability can attach to alleged conspiracies between officials of the same Executive Branch entity. *Abbasi* identified "sound" separation-of-powers reasons why Section 1985(3) does not apply in such circumstances—and those reasons were separate from the Court's discussion of the intracorporate conspiracy doctrine. 582 U.S. at 154. The separation-of-powers reasons identified in *Abbasi* suffice to resolve this case. Accordingly, there would be no need for the Court here to address the broader question whether the intracorporate conspiracy doctrine applies to Section 1985(3).[5]

3. Cross-petitioner identifies no circuit conflict warranting this Court's review.

a. Cross-petitioner contends (Cross-Pet. 12) that seven circuits disagree with the Fifth Circuit's rule that federal officials may not be held liable under Section 1985(3). Yet all but one of the cited decisions was issued before this Court's decision in *Abbasi*. As noted above, in the course of resolving the plaintiffs' Section 1985(3) claim on qualified-immunity grounds, *Abbasi* articulated "sound reasons to conclude that conversations and agreements between and among federal officials in the same Department should not be the subject of a private cause of action for damages under § 1985(3)." 582 U.S.

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[5] Cross-respondents thus take no position on whether the intracorporate conspiracy doctrine applies to a Section 1985(3) claim alleging that multiple employees of the same private firm, or multiple employees of the same state or local government, conspired to deny a plaintiff equal protection of the law. See *Great Am. Fed. Sav. & Loan Ass'n* v. *Novotny*, 442 U.S. 366, 372 n.11 (1979) (reserving that question).

at 154. This Court should accordingly allow for further percolation in light of *Abbasi*.

The only post-*Abbasi* decision cited by cross-petitioner is meaningfully distinct from the decision below. In *Davis* v. *Samuels*, 962 F.3d 105 (2020), the Third Circuit considered an alleged conspiracy between federal officials and *private* actors, see *id.* at 114, as opposed to an alleged conspiracy between multiple officials of the same Executive Branch entity. So *Davis* did not present the same separation-of-powers concerns as in *Abbasi* and the case here.

b. Cross-petitioner also alleges (Cross-Pet. 16) a circuit conflict over whether the intracorporate conspiracy doctrine applies to Section 1985(3) claims. But only one of cross-petitioner's cited cases considered an alleged conspiracy between multiple officials of the same Executive Branch entity. See *Johnson* v. *Vilsack*, 833 F.3d 948, 958 (8th Cir. 2016). And the Eighth Circuit there reached the same result as the Fifth Circuit here: the Section 1985(3) claim could not proceed. *Ibid.*

Cross-petitioner's other cited cases involved alleged conspiracies between employees of the same private company, see, *e.g.*, *Brever* v. *Rockwell Int'l Corp.*, 40 F.3d 1119, 1126-1127 (10th Cir. 1994), or alleged conspiracies between state or local officials, see, *e.g.*, *Bhattacharya* v. *Murray*, 93 F.4th 675, 699 (4th Cir.), cert. denied, 145 S. Ct. 443 (2024). Neither of those distinct contexts raises the separation-of-powers concerns identified in *Abbasi*. And the arguments about whether the intracorporate conspiracy doctrine should apply to Section 1985(3) claims in those contexts have little bearing here. To the extent the Court might wish to resolve tension between the circuits over application of the intracorporate conspiracy doctrine to Section 1985(3), it

should await a case involving an alleged conspiracy between private, state, or local employees of the same entity.

## CONCLUSION

The conditional cross-petition for a writ of certiorari should be denied.

Respectfully submitted.

SARAH M. HARRIS
*Acting Solicitor General*
YAAKOV M. ROTH
*Acting Assistant Attorney General*
GERARD SINZDAK
URJA MITTAL
*Attorneys*

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