IN THE UNITED STATES SUPREME COURT

CASE NO. 24-6854

AUSTIN ROGER CARTER,

Petitioner,

v.

GENESIS ALKALI, LLC; GENESIS ENERGY L.P.;
CODY J. PARKER; TERRY HARDING; and KRISTEN O. JESULAITIS,
Respondents.

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

RESPONDENTS' BRIEF IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

NICOLE S. LEFAVE
Counsel of Record
LITTLER MENDELSON, P.C.
100 Congress Avenue
Suite 1400
Austin, Texas 78701

Counsel for Respondents
Genesis Alkali, LLC; Genesis Energy, L. P.;
Cody J. Parker; Terry Harding;
and Kristen O. Jesulaitis

PARTIES TO THE PROCEEDING

Petitioner Austin Roger Carter is the plaintiff in the District Court proceeding and the petitioner in the court of appeals proceeding.

Respondents Genesis Energy, L.P.; Genesis Alkali, LLC; Kristen O. Jesulaitis; Cody J. Parker; and Terry Harding are defendants in the District Court proceeding and respondents in the court of appeals proceedings.

Respondent Genesis Energy, L.P. has no parent corporation and is a publicly traded limited partnership. No publicly held corporation owns 10% or more of its stock.

On February 28, 2025, Respondent Genesis Alkali, LLC became a wholly owned subsidiary of WE Soda US LLC. Genesis Alkali, LLC changed its name to WE Soda Alkali LLC on March 10, 2025, and is not a publicly traded company.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

RELATED CITATIONS

Carter v. Genesis Alkali, LLC, et al., No. 20-CV-216-SWS, 2021 WL 973448 (D. Wyo. Feb. 16, 2021)

Carter v. Genesis Alkali, LLC, et al., No. 20-CV-216-SWS, 2021 WL 7209885 (D. Wyo. Apr. 14, 2021)

Carter v. Genesis Alkali, LLC, et al., No. 20-CV-216-SWS, 2021 WL 7209884 (D. Wyo. June 2, 2021)

Carter v. Genesis Alkali, LLC, et al., No. 20-CV-216-SWS, 2021 WL 7209790 (D. Wyo. Aug. 26, 2021)

Carter v. Genesis Alkali, LLC, et al., No. 20-CV-216-SWS, 2022 WL 613167 (D. Wyo. Jan. 4, 2022)

Carter v. Genesis Alkali, LLC, et al., No. 20-CV-216-SWS, 2022 WL 398823 (D. Wyo. Feb. 8, 2022)

Carter v. Genesis Alkali LLC, et al., No. 22-8009, 2022 WL 3155187 (10th Cir. Mar. 17, 2022)

Carter v. Genesis Alkali, LLC, et al., 143 S. Ct. 112 (2022)

Carter v. Genesis Alkali, LLC, et al., No. 23-8079, 2024 WL 4491802 (10th Cir. Oct. 15, 2024)

STATEMENT OF THE CASE

Pursuant to Rule 15.2 of the Supreme Court Rules, Respondents file this Brief in Opposition to Petitioner's Petition for Writ of Certiorari to address misstatements of fact and law that bear on issues that would come before the Court if it granted certiorari. A cursory review of the record reveals that the inflammatory and unsupported allegations in Petitioner's filing to be provably false. Moreover, as a matter of law the issues presented in the Petition were correctly addressed in the District Court and the Tenth Circuit Court of Appeals. To the extent they were not previously addressed, the issues presented provide no appropriate basis for this Court to grant certiorari. As such, Respondents respectfully ask that this Court deny the Petition.

REASONS FOR DENYING THE PETITION

I. Petitioner Misrepresents the Proceedings Below

This Petition follows more than four years of protracted litigation, during which Petitioner openly and repeatedly disregarded court orders, violated the Federal Rules, and refused to prosecute the lawsuit he filed. Petitioner preferred instead to attempt to use this litigation to exact personal revenge against Respondents—and then against the Court and Respondents' counsel—through misuse of the legal system.

The District Court spent years affording Petitioner the benefit of the doubt and bending over backward to accommodate his *pro se* status. Petitioner repeatedly flouted the District Court's orders and refused to abide by the Federal Rules. Petitioner's abusive conduct finally came to a head more than three years into the

litigation, when the District Court expressly warned him, in a formal Order, that one more violation of any court order or Federal Rule would result in a dismissal. Subsequently, Petitioner again disregarded the Court's Order and another Federal Rule by failing to appear for his properly noticed deposition without offering any legitimate excuse or seeking any protection from the Court or accommodation from Respondents. The District Court appropriately dismissed Petitioner's lawsuit, finding he had engaged in a pattern of abusive litigation conduct that the District Court could no longer abide.

Petitioner continues the same pattern before this Court. In his Petition, Petitioner grossly misrepresents the factual and procedural history of this case and engages in baseless *ad hominem* attacks against Respondents, their counsel, various judges and political figures in Wyoming, and the Tenth Circuit Court of Appeals. It remains clearer than ever that Petitioner has no interest in pursuing the merits of his case, but instead only continuing to seek personal revenge against Respondents and anyone else tangentially related to his lawsuit.

Respondents provide the below factual and procedural summary to assist the Court in its review of the Petition.

A. Relevant Factual Background

Petitioner is a former employee of Respondent WE Soda Alkali LLC (f/k/a Genesis Alkali, LLC) ("Genesis Alkali"), a formerly wholly owned subsidiary of Respondent Genesis Energy, L.P.[1] Petitioner worked for Respondent Genesis Alkali

[1] Genesis Energy LP, as the former ultimate parent, sold all of its membership interests in WE Soda Holdings LLC (f/k/a Genesis Alkali Holdings LLC), the parent company of WE Soda Alkali LLC (f/k/a

in Green River, Wyoming as a Procurement Supervisor and, later, as Procurement Manager. ECF No. 1 ¶ 9.[2] He reported directly to Respondent Cody J. Parker, Controller at Genesis Alkali, and his second-level manager was Respondent Terry Harding, Vice President of Finance. *Id.* Respondent Kristen O. Jesulaitis serves as General Counsel to Genesis Energy. *Id.* ¶ 18.

Petitioner's employment with Genesis Alkali ended on June 10, 2019 as a result of Petitioner's repeated failure to perform his job duties satisfactorily. *Id.* ¶ 23; ECF No. 1-2 at 60, 75. Unbeknownst to Respondents Parker and Harding—who made the decision to terminate Petitioner's employment—on May 29, 2019, Petitioner complained to Genesis Energy's corporate hotline. ECF No. 1 ¶ 19. To investigate Petitioner's hotline complaint fully, Genesis Energy worked with Petitioner to stay on the payroll and receive certain benefits while he cooperated with the internal investigation into his complaint. ECF No. 58-1 ¶ 3; ECF No. 1 ¶ 34. During this process, Respondent Jesulaitis made clear to Petitioner that she represented the corporate entities and not Petitioner. ECF No. 58-1 ¶ 3. Respondent Jesulaitis further did not ask for or receive any confidential or attorney-client privileged information from Petitioner that reasonably would have formed the basis of a confidential attorney–client relationship. *Id.* ¶ 5.

Genesis Alkali, LLC) to WE Soda US LLC and its ultimate U.S. parent Ciner Enterprises Inc. on February 28, 2025.

[2] Citations to the district court proceedings are made to the Electronic Case File Number assigned by PACER in the matter styled *Austin Roger Carter v. Genesis Alkali LLC, et al.*, Case No. 2:20-cv-00216-SWS, in the United States District Court for the District of Wyoming.

To investigate Petitioner's complaint, Genesis Energy engaged outside counsel, Earl M. "Chip" Jones of Respondents' counsel's Dallas, Texas office. ECF No. 58-1 ¶¶ 3–4; ECF No. 58-2 ¶¶ 4, 6–7. The objective evidence in the record—including Petitioner's own statements in emails—establishes that, at all times, Ms. Jesulaitis and Mr. Jones represented Genesis Energy and Genesis Akali, and never acted as Petitioner's legal counsel in either his corporate or personal capacity. ECF No. 58-1 ¶¶ 3–5; ECF No. 58-2 ¶¶ 5, 10; ECF No. 58-2 at 7.

On or about July 30, 2019, as part of his discussions with Petitioner concerning Petitioner's cooperation with the internal investigation, Mr. Jones presented Petitioner with a tolling agreement that would toll any claims Petitioner believed he had or could assert against Genesis Energy and Genesis Alkali arising from the termination of his employment. ECF No. 58-2 ¶ 8; ECF No. 1-2 at 72–73. Petitioner rejected the tolling agreement after having it reviewed "in depth" by "several attorneys" of his own choosing. ECF No. 58-2 at 7. Petitioner's own words in his email correspondence with Mr. Jones show that Petitioner was pursuing his own legal representation and, failing that, he chose to represent himself. *See id.*

In the fall of 2019, Mr. Jones was diagnosed with a medical condition and went on indefinite medical leave. *Id.* ¶ 11. Kelley Edwards, based in Respondents' counsel's Houston, Texas office, took over as lead attorney for Genesis Energy and Genesis Alkali in discussions with Petitioner. ECF No. 58-3 ¶ 3. Ms. Edwards, like Mr. Jones before her, made clear to Petitioner that she represented Respondents and not Petitioner. *Id.* ¶ 4. At no point did Ms. Edwards seek or obtain any information from

Petitioner that would be privileged or confidential pursuant to the attorney–client privilege. *Id.* ¶ 6.

While Genesis Energy's internal investigation was pending, on December 10, 2019, Petitioner filed his whistleblower retaliation complaint with the Department of Labor, Occupational Safety and Health Administration ("DOL–OSHA"). ECF No. 1-1 at 2–8. Edwards represented Genesis Energy and Genesis Alkali during the DOL–OSHA investigation, together with undersigned counsel, Nicole LeFave of Respondents' counsel's Austin, Texas office. ECF No. 58-3 ¶¶ 3, 5. Respondents' counsel, on behalf of Genesis Energy and Genesis Alkali, submitted a position statement in response to Petitioner's complaint on July 10, 2020. *Id.* ¶ 5. Because 180 days elapsed from the date of Petitioner's administrative complaint with no decision from DOL–OSHA, Petitioner informed the investigator of his intent to file suit in the District Court. ECF No. 1-1 at 2.

At the conclusion of Genesis Energy's internal investigation, on June 3, 2020, Petitioner's employment was officially terminated. ECF No. 1-2 at 75; ECF No. 1 ¶ 35. The investigation revealed no fraudulent activity. ECF No. 1-2 at 75. During the pendency of the internal investigation, Petitioner received his full salary and benefits, but performed no work, other than remaining available to cooperate with the internal investigation. ECF No. 1 ¶ 34; ECF No. 1-2 at 75.

B. Procedural History

Petitioner filed his lawsuit on November 25, 2020, asserting violations of Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A ("SOX"), violations of the

Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), and defamation under Wyoming state law. ECF No. 1. Petitioner named as Defendants Fred Von Ahrens, Edward Flynn,[3] Kristen Jesulaitis, Cody Parker, and Terry Harding, as well as the corporate entities Genesis Alkali and Genesis Energy.[4]

The matter was originally assigned to the Honorable Nancy D. Freudenthal. ECF No. 2. The matter was reassigned to the Honorable Scott W. Skavdahl after all parties declined to waive a conflict of interest on the part of Judge Freudenthal. ECF No. 26. Judge Freudenthal made no ruling on any matter during the time she served as the presiding judge—all matters determined prior to the case's reassignment were referred to the Honorable Kelly H. Rankin, the assigned Magistrate Judge.[5] ECF Nos. 7–9, 19–20 (rulings made before reassignment).

1. Petitioner Makes a Groundless Attempt at Default Judgment Against the Genesis Entities

Petitioner's original attempt to serve the Genesis Entities was defective. Mindful of Petitioner's *pro se* status, on January 26, 2021, Respondents filed a notice of defective service with the District Court, to alert Petitioner and the District Court to Petitioner's failure to effectively serve the Genesis Entities. ECF No. 16. Rather than attempt to cure service, Petitioner filed a motion for default judgment against the Genesis Entities on February 5, 2021. ECF Nos. 24–25. Judge Skavdahl denied the motion on February 16, 2021. ECF No. 28.

---

[3] Fred Von Ahrens was the Vice President of Manufacturing at Genesis Alkali and Edward Flynn was an Executive Vice President at Genesis Energy. ECF No. 1 ¶¶ 16–17.
[4] Hereinafter, Genesis Alkali and Genesis Energy are jointly referred to as "the Genesis Entities." The individuals named as defendants are referred to collectively as "the Individual Defendants."
[5] Judge Rankin assumed the office of United States District Judge on March 12, 2024.

Petitioner then filed a motion to reconsider the District Court's order denying the motion for default judgment. ECF No. 30. On March 15, 2022, before the District Court could rule on the motion, Petitioner appealed the order denying the motion for default judgment to the Court of Appeals for the Tenth Circuit. ECF No. 32. After affording Petitioner an opportunity to be heard as to why his appeal should not be dismissed for lack of jurisdiction, on April 7, 2021, the Tenth Circuit dismissed the appeal. ECF No. 37. The appellate court correctly held that it lacked jurisdiction over the appeal because the order denying the motion for default judgment was not a "final decision" and was not subject to review before the entry of a final judgment. *Id.* at 1–2. The District Court then denied Petitioner's motion for reconsideration of the order denying his motion for default judgment on April 14, 2021. ECF No. 39.

While the parties litigated the default judgment issue, the Individual Defendants, after being served, filed a Rule 12(b)(6) motion to dismiss. ECF Nos. 5–6, 23. Petitioner did not respond to the motion and, on February 18, 2021, after the time for Petitioner to respond elapsed, the Individual Defendants renewed their motion to dismiss. ECF No. 29. On March 22, 2021, Judge Skavdahl granted the motion to dismiss in part, dismissing all claims against Individual Defendants Von Ahrens and Flynn,[6] and dismissing the Dodd-Frank and defamation claims against Respondents Jesulaitis, Parker, and Harding. ECF No. 36 at 21. Notably, this order was entered while the Petitioner's appeal of the order denying his motion for default judgment was pending. Petitioner raised no issue with the District Court entering

[6] Petitioner does not appear to assert error in the dismissal of Von Ahrens and Flynn in this appeal.

this order while his appeal was pending, nor did he move to reconsider or appeal this order.

Petitioner successfully served the Genesis Entities on April 14, 2021, and on May 4, 2021, the Genesis Entities filed a Rule 12(b)(6) partial motion to dismiss the Dodd-Frank and defamation claims against them. ECF Nos. 40, 42. Judge Skavdahl granted this motion on June 2, 2021. ECF No. 48. On July 1, 2021, Petitioner filed a motion for reconsideration of this order. ECF No. 49. The District Court denied the motion on August 26, 2021. ECF No. 51. All told, these rulings left only the SOX claim pending against the Genesis Entities, Jesulaitis, Parker, and Harding.

2. Petitioner Files a Meritless Motion To Disqualify Respondents' Counsel

After over 10 months of this preliminary litigation, this matter was set for an initial status conference to proceed on October 8, 2021. ECF No. 52, 54. The parties appeared and agreed, at Petitioner's request, to continue the initial status conference so Petitioner could seek and obtain legal counsel. ECF No. 54. The continued status conference, held November 8, 2021, was further continued, again at Petitioner's request, to allow Petitioner more time to seek and obtain legal counsel. ECF No. 56. On December 8, 2021, the parties convened once more, and the initial status conference again was continued by agreement for Petitioner to have even more time to seek and obtain legal counsel. ECF No. 60. On January 21, 2022, Petitioner sought, and received, a fourth continuance of the initial status conference for personal reasons. ECF Nos. 66–67. The initial status conference finally went forward on

February 9, 2022, after four months' delay and more than 14 months after Petitioner filed his lawsuit. ECF No. 75.

While seeking continuances to obtain counsel, Petitioner simultaneously prosecuted a meritless motion to disqualify Respondents' counsel. He filed the motion on October 7, 2021, on the eve of the originally set initial status conference. ECF No. 53. Petitioner's motion was rooted in his mistaken belief about a proposed joint protective order that Respondents' counsel presented to Petitioner. *See* ECF No. 53 at 19–29. Petitioner claimed the draft protective order would operate to waive "protections" to purportedly confidential information Petitioner claimed to have disclosed to Respondents' counsel during Genesis Energy's investigation.[7] But, the proposed joint protective order was simply a form order intended to protect from disclosure to the general public any confidential, trade secret, or proprietary information of Respondents, and certain personal information of Petitioner, that might be produced in the course of discovery by either party. *Id.* at 19. It did not ask Petitioner to waive any conflicts of interest or any purported attorney–client relationship. *Id.* at 19–29.

Petitioner refused to stipulate to the proposed protective order and instead filed his motion to disqualify counsel. After the parties briefed the motion to disqualify, Judge Rankin denied the motion on January 4, 2022. ECF No. 64. On January 12, 2022, Petitioner sought reconsideration of Judge Rankin's order. ECF No. 65. Judge Skavdahl denied the motion for reconsideration on February 8, 2022.

[7] Respondents unequivocally deny that any such disclosure ever occurred and deny that any attorney–client relationship ever existed between Petitioner and Respondents' counsel.

ECF No. 71. Petitioner then filed his second improper interlocutory appeal on February 9, 2022, minutes before the initial status conference was set to proceed. ECF No. 72.

The initial status conference went forward as scheduled on February 9, 2022. ECF No. 75. At the outset, Petitioner stated that he had filed an appeal of the rulings on the disqualification issue. Judge Rankin acknowledged the pending appeal and stated that the hearing would go forward because Petitioner's appeal was likely to be dismissed. Judge Rankin entered an Initial Pretrial Order, setting the deadlines that would govern the case's progression. ECF No. 75. The Tenth Circuit dismissed Petitioner's second appeal on March 17, 2022, as it had dismissed his first appeal, for lack of jurisdiction, holding the District Court's order on the disqualification motion was not appealable until entry of a final judgment in this matter. ECF No. 80.

3. Petitioner Refuses To Participate in Discovery

Respondents proceeded with discovery as ordered by the District Court. Respondents served their initial disclosures in accordance with the March 4, 2022 service deadline. ECF No. 75 at 3. Petitioner failed to serve initial disclosures by the deadline. Respondents served written discovery on Petitioner on April 12, 2022. On June 2, 2022, having received no initial disclosures, written discovery responses, or document production from Petitioner, Respondents sent Petitioner a discovery deficiency letter, asking Petitioner to serve his initial disclosures, written discovery responses, and document production on or before June 15, 2022, and to provide a date in early August 2022 when he would be available for his deposition. ECF No. 101-1 at 2–3. Petitioner did not respond.

Instead, on June 13, 2022—three months after the District Court denied his motion to disqualify defense counsel—Petitioner filed a Petition for Writ of Certiorari to this Court concerning the motion to disqualify counsel. ECF No. 81. The petition was denied on October 3, 2022. *Carter v. Genesis Alkali, LLC, et al.*, 143 S. Ct. 112 (2022).

On July 11, 2022, due to Petitioner's refusal to engage in the discovery process and ongoing failure to respond to communications from defense counsel, Respondents contacted the Court via email, with Petitioner copied, pursuant to the Local Rules' procedures for resolution of discovery disputes. ECF No. 101-2 at 2. The Court set a hearing for July 22, 2022 to address the discovery issues. ECF No. 82. Petitioner failed to appear at the hearing. ECF No. 84.

Instead, on the eve of the hearing, Petitioner filed a motion for stay and to vacate the July 22 hearing. ECF No. 83. The court denied the motion. ECF No. 94. Because Petitioner failed to appear at the July 22 hearing, the Court reset the hearing for August 1, 2022. ECF No. 85. Petitioner again failed to appear. ECF Nos. 89–90. Cognizant of Petitioner's *pro se* status, the District Court reset the hearing, once more, to August 22, 2022. *Id.*

To ensure Petitioner received notice of this reset hearing, and with the Court's approval, Respondents' counsel emailed Petitioner on three separate occasions—using Petitioner's email address on file in the Court's record—seeking confirmation from Petitioner that he would attend the August 22, 2022 hearing. ECF 100-3 at 2–4. Continuing to exhibit his complete disdain for a cooperative litigation process and

for Respondents' counsel, Petitioner did not respond to any of these communications. Instead, on August 22, Petitioner once again failed to appear at a hearing ordered by the Court. ECF No. 95. Petitioner made no call, filed no motion, and offered no excuse.

At the conference, Respondents informed the Court they would proceed with filing a motion for order to show cause as to why the matter should not be dismissed due to Petitioner's failure to prosecute his case and failure to abide by the Federal Rules and the District Court's orders. *Id.*

A week later, on August 29, 2022, Petitioner filed an extensive motion to disqualify Judge Skavdahl and Judge Rankin. ECF No. 96. Remarkably, Petitioner took the time and made the effort to prepare and file this motion but made no effort to notify the District Court or Respondents' counsel that he would not be attending the August 22 hearing. The District Court denied Petitioner's motion to disqualify on September 6, 2022. ECF No. 98. Petitioner filed a motion to reconsider the Court's ruling on September 16, 2022. ECF No. 99. That motion was denied on October 3, 2022. ECF No. 104. Petitioner then filed a petition for writ of mandamus with the Tenth Circuit, which also was denied. ECF Nos. 109, 121.

Concurrent with Petitioner's motion to disqualify, Respondents continued their attempts to hold Petitioner accountable to his discovery obligations. On September 28, 2022, Respondents filed their motion for show cause order, consistent with their representations at the August 22 hearing. ECF No. 100. Respondents also filed a motion for sanctions based on Petitioner's repeated failures to cooperate in discovery and to appear at multiple discovery hearings. ECF No. 101. The Court granted the

motion for show cause order and set an in-person show-cause hearing in Cheyenne for November 22, 2022. ECF 111. But, the hearing was vacated after Petitioner notified the Court that he would not appear due to his then-pending petition for writ of mandamus concerning his motion to disqualify Judge Skavdahl and Judge Rankin. ECF No. 120. To accommodate Petitioner again, the hearing was reset to February 23, 2023. ECF No. 124.

The hearing went forward, in person, on February 23. ECF No. 127. At the conclusion of the hearing, the Court directed Respondents to re-serve their written discovery requests on Petitioner by February 24, 2023, and ordered Petitioner to respond to the same and serve his initial disclosures no later than March 9, 2023. *Id.* At this point, the parties were more than two years into the litigation of Petitioner's claim. Respondents had been waiting a full year just to receive Petitioner's initial disclosures and almost 11 months for him to respond to the written discovery they served on him the previous April. Respondents did not receive Petitioner's responses and disclosures until March 13, 2023, four days after the District Court directed him to respond. ECF No. 128 at 1–2.

4. Petitioner Is Admonished that Further Delays or Failures To Participate Will Result in Dismissal of his Lawsuit

On April 13, 2023, Judge Rankin issued an order granting in part and denying in part Respondents' motions for sanctions. ECF No. 131. In its order, the Court found Respondents "suffered substantial and severe prejudice" based on Petitioner's "actions and inactions." ECF No. 131 at 7. The Court further found that Petitioner's "actions and inactions have also severely interfered with the judicial process" by

"caus[ing] [Respondents] to unnecessarily expend time and resources . . . ." *Id.* at 8. The Court noted that Petitioner "has shown a repeated pattern of refusing to participate with defense counsel and ignoring Court hearings and deadlines." *Id.* at 9. And the Court recognized that Petitioner "has been warned on multiple occasions that failure to participate in discovery and comply with Court orders could result in the dismissal of his case." *Id.*

While describing Petitioner's failures as "egregious," the Court demurred on recommending dismissal, but found that Respondents were entitled to recover their costs as a sanction. *Id.* at 12. The Court further cautioned Petitioner "that any future delays, failures to participate in the litigation of this action, failures to participate in discovery, or meet a Court imposed deadline *will likely result in the dismissal of the action*." *Id.* at 12–13 (emphasis added). The Court set a status conference for May 4, 2023 to address a new scheduling order. *Id.* at 13.

While Respondents' sanctions motion was pending, Petitioner served his first set of discovery requests on Respondents on March 21, 2023—nearly two years and four months after he filed his Complaint and five months after the discovery deadline in the District Court's original scheduling order had passed. ECF No. 75 at 5 (setting October 10, 2022 discovery deadline). Many of Petitioner's discovery requests simply were copied and pasted verbatim from the discovery requests Respondents served on him.

Given the pending motion for sanctions, Respondents sought an extension of the deadline to respond, which Petitioner refused to provide. ECF No. 142-1 at 4–5.

After the Court issued its sanctions Order on April 13, Respondents asked Petitioner if he would be willing to abate Respondents' response deadline until the parties' received direction from the Court at the upcoming May 4 hearing. *Id.* at 3. Petitioner again refused. *Id.* at 2. Because Petitioner's discovery requests were untimely under the Court's initial scheduling order in the case, and a new scheduling order had not been entered, Respondents sought intervention from the Court, via email and with Petitioner copied, and the Court stayed the deadline until the issue could be resolved at the May 4 hearing. ECF No. 133.

The May 4 hearing went forward telephonically as scheduled. ECF No. 135. The Court entered a new scheduling order, which included an October 20, 2023 deadline to complete discovery. ECF No. 137 at 3. Respondents served their written discovery responses and accompanying document production to Petitioner on June 5, 2023, as ordered by the Court. *See* ECF No. 135 (directing Respondents to respond by June 5).

On June 21, 2023—without first conferring with Respondents' counsel as required by the local rules—Petitioner contacted the District Court via email to seek leave to file a motion to compel and motion for sanctions against Respondents. ECF No. 142-2 at 2. His email did not identify a single discovery response that he found to be objectionable or deficient. *Id.* His email did, however, vaguely accuse Respondents and their counsel of hacking his personal email account—an accusation with *zero* factual support and that Respondents and their counsel vehemently deny. *Id.*

On June 23, 2023, Respondents' counsel contacted Petitioner via email to attempt to confer on the alleged discovery deficiencies and to explain the entirely lawful manner in which Defendant Genesis Alkali had long possessed the documentation Petitioner described to the Court in his email. ECF No. 142-3 at 2–3. Petitioner himself stored the documentation in Genesis Alkali's computer system and left the documentation behind after his employment ended.[8] *Id.* at 3. Because Petitioner did not respond to this attempt to confer, Respondents' counsel again contacted Petitioner via email on June 29, 2023, asking him to at least acknowledge receipt of counsel's email. *Id.* at 2. Petitioner did not respond to this communication either. Before Respondents contacted and updated the Court in response to Petitioner's June 21 email, the Court issued an Order that, having not yet heard an objection or response from Respondents, "Petitioner may file any motions he deems necessary to address Defendant's alleged discovery deficiencies." ECF No. 139.

On August 2, 2023, Petitioner filed his motions for injunctive relief and for sanctions. ECF No. 140 (injunctive relief); ECF No. 141 (sanctions). In short, the motions accused Respondents, their current and former counsel, the outside forensic accounting firm that initially investigated Petitioner's complaints, and another, nonparty Genesis Alkali employee of a vast and unsubstantiated conspiracy to spy on him—through his cell phone number—to access his "personal email accounts, servers, Wi-Fi, iCloud, financial information, health records, Microsoft 365, Microsoft Cloud

[8] Although he did not respond to this email correspondence—which was sent using the same email address contained in the District Court record—Petitioner clearly received it. He attached a copy of it as an exhibit to both his motion for injunctive relief and motion for sanctions. *See* ECF No. 140 at 24–35; ECF No. 141 at 29–30.

(where my documents are stored), social media, communications between attorneys, attorney-client protected communication, communication with Government Officials, expert witnesses and all other personal information including all passwords for the above mentioned." ECF No. 140 at 1. Petitioner's motions, rife with *ad hominem* attacks, included no documentation whatsoever to support his outlandish claims. *See generally* ECF Nos. 140, 141.

These motions represented yet another tactic in a nearly four-year course of harassment Petitioner tirelessly conducted against Respondents—in accordance with his own rules and desires of the day—since his original termination from Genesis Alkali in 2019. Respondents responded by renewing their motion to dismiss on August 10, 2023, arguing to the District Court that Petitioner's motions for injunctive relief and for sanctions were nothing more than yet another attempt to delay final resolution of this matter. ECF Nos. 142, 143. Respondents reminded the District Court of its previous multiple and unequivocal warnings to Petitioner that further dilatory conduct or failure to abide by the civil and local rules would result in dismissal of his lawsuit. ECF No. 142 at 11–12. In light of these warnings and Petitioner's unabated improper conduct, Respondents asked the Court to dismiss Petitioner's lawsuit with prejudice as a sanction for his repeated abusive litigation conduct. *Id.*

5. Petitioner Refuses To Appear for his Deposition and his Lawsuit Is Dismissed

While the parties briefed their positions on the pending motions, the October 20, 2023 discovery deadline approached. On September 22, 2023, Respondents

contacted Petitioner concerning setting a status conference with the District Court to discuss the pending motions and upcoming deadlines. ECF No. 149 at 9. Petitioner stated that he "vehemently object[ed]" to such a call. *Id.* at 8. Respondents, attempting to cooperate with Petitioner, asked whether Petitioner instead would be willing to have a call with defense counsel, not the District Court, to discuss what steps would need to be taken to comply with the scheduling order. *Id.* at 7. In particular, defense counsel informed Petitioner of Defendant's intention to take his deposition before the close of discovery and the need to identify a date on which to do so. *Id.* at 6–7. Again, Petitioner refused to confer, stating he would participate in "no phone calls or dialogue prior to" the District Court ruling on the pending motions. *Id.* at 6. Petitioner further indicated his intent to depose "the Defendants" but failed to identify any deponent by name or propose dates or times for their depositions. *Id.*

Having been blocked dismissively from even speaking with Petitioner, Respondents had no choice but to notice Petitioner's deposition formally, in accordance with Rule 30, to proceed on October 18, 2023. ECF No. 148. Respondents took this action to ensure they preserved their right to complete Petitioner's deposition prior to the Court's October 20, 2023 discovery deadline. Respondents also filed a copy of the deposition notice with the District Court in an abundance of caution, given Petitioner's long history of discovery abuse. *Id.*

On October 10, 2023, Petitioner filed his "Notice of Falsification of Defendants [sic] Videotaped Deposition of Austin Carter and Defendants' Surreptitious Actions," once more attempting to attribute a nefarious motive to Respondents and their

counsel. ECF No. 149. Petitioner engaged in additional *ad hominem* attacks on Respondents' counsel, referring to them as "dolts," "cheats," and "liars." *Id.* at 3. Yet all Respondents had done was properly notice Petitioner's deposition in accordance with the Court's scheduling order and the Federal Rules.

On October 16, 2023, two days before Petitioner's scheduled deposition, Respondents' counsel made multiple attempts to contact Petitioner, both via email and over the phone, to confirm that Petitioner would appear for his properly noticed deposition. ECF No. 153-1 at 2–4. Petitioner responded late that evening, stating emphatically, "NO," he would not be attending his noticed deposition. *Id.* at 2. Petitioner, in fact, did not appear for his deposition as noticed, nor did Petitioner seek a protective order from the District Court to excuse Petitioner from his noticed deposition. ECF No. 153 at 3.

On October 25, 2023, Respondents sought and obtained leave to supplement their pending motion to dismiss to inform the District Court of Petitioner's failure and refusal to appear for his own deposition. ECF Nos. 151, 152. Respondents reiterated their request that the District Court dismiss Petitioner's case as a sanction, based on Petitioner's continued willful failure to abide by the Federal Rules and the District Court's orders. ECF No. 153 at 3–5.

On November 1, 2023, the District Court issued its Order granting Respondents' motion to dismiss with prejudice "as a sanction for [Petitioner]'s many and continued failures and refusals to prosecute this case and comply with the rules of procedure and court orders." ECF No. 155 at 10. The District Court noted that

"[Petitioner] has proceeded pro se without the assistance of an attorney, and therefore the magistrate judge and this Court have construed his filings liberally and been as forgiving of his erroneous practices as possible." *Id.* at 1. The District Court recognized that Judge Rankin previously ordered the payment of fees and declined to dismiss Petitioner's claims "in the hope that [Petitioner] would prosecute his case in a more appropriate manner." *Id.* According to the District Court, "That hope has borne no fruit." *Id.*

After quoting at length from the Judge Rankin's April 13, 2023 sanctions order, recounting Petitioner's repeated "deficiencies and failures" in pursuing the case he filed, the District Court analyzed the relevant factors concerning dismissal as a sanction and found all were met. *Id.* at 2–10. In particular, the District Court found Petitioner "willfully obstructed the discovery and litigation process," which caused Respondents "substantial actual prejudice." *Id.* at 7. The District Court reiterated that Petitioner's conduct "severely interfered with the judicial process" and that his "various failures and refusals are his own doing." *Id.* at 8. The District Court observed that Petitioner was previously warned on multiple occasions that failure to participate in discovery and abide by court orders would result in the dismissal of his lawsuit and that lesser sanctions had been ineffective in curtailing Petitioner's "abusive misconduct." *Id.* at 9–10. The District Court concluded:

> [Petitioner]'s willful refusals and non-compliance outweigh the judicial system's strong predisposition to resolve cases on their merits. Indeed, [Petitioner]'s own actions demonstrate he is not interested in resolving his claims on their merits, and the Court will not abide [Petitioner]'s use of the judicial system as a tool of harassment. The Court finds dismissal of this lawsuit is the only reasonable sanction remaining for

> [Petitioner]'s failures and refusals to participate in the proper litigation of his case.

Id. at 10 (internal citation omitted). The District Court denied Petitioner's motions for injunctive relief and sanctions as moot in light of the dismissal order. *Id.* Final Judgment was entered on November 1, 2023. ECF No. 156.

6. The Tenth Circuit Court of Appeals Affirms the District Court's Rulings

Petitioner appealed the Order dismissing his lawsuit to the Tenth Circuit Court of Appeals on November 21, 2023. ECF No. 158. The Tenth Circuit affirmed the District Court in an Order issued on October 15, 2024. *Carter v. Genesis Alkali, LLC, et al.*, No. 23-8079, 2024 WL 4491802, at *3 (10th Cir. Oct. 15, 2024). Specifically, the Tenth Circuit found the District Court acted within its discretion in dismissing Petitioner's lawsuit with prejudice for his litigation misconduct, denying his motion to disqualify Judges Skavdahl and Rankin, denying his motions for injunctive relief and sanctions as moot, and denying his motion for stay during his improper interlocutory appeal. *Id.* at *2–3. Petitioner now seeks relief in this Court.

7. Petitioner Continues his Pattern of Harassment and Abusive Litigation Conduct in his Petition

As below, Petitioner continues his abusive litigation conduct in his Petition, launching *ad hominem* attacks on Respondents, their counsel, various judges and political figures in the state of Wyoming, and the Tenth Circuit Court of Appeals. For example, he makes additional baseless allegations against Respondents, their counsel, the District Court judges, Governor David Freudenthal, and Judge Nancy Freudenthal, asserting they colluded to get Petitioner's lawsuit dismissed in order to

somehow facilitate the sale of Genesis Alkali, groundlessly asserting that "Genesis withheld a great deal of information from the Security [sic] and Exchange Commission (SEC), and the Freudenthal's [sic], Skavdahl, Rankin, Davis and Cannon, and Littler attorneys were patiently waiting until they could drag Petitioner over the line so this transaction could occur and they could profit."[9] The sale of Genesis Alkali occurred in February 2025, more than 16 months after the District Court dismissed Petitioner's lawsuit—and almost six years after Petitioner's last day worked at Genesis Alkali.

Petitioner recites five questions presented in his Petition, but each question is a variation on the theme of whether the District Court acted appropriately in dismissing his lawsuit with prejudice and denying his motion for injunctive relief and motion for sanctions. The District Court acted fully within the bounds of its discretion on both points, and this Court should deny the Petition.[10]

II. The District Court Correctly Dismissed Petitioner's Lawsuit

A. Petitioner's Lawsuit Properly Was Dismissed as a Sanction for his Refusal To Prosecute the Lawsuit he Filed

The District Court acted appropriately in dismissing Petitioner's claims pursuant to Rule 41(b) "as a sanction for [Petitioner]'s many and continued failures and refusals to prosecute this case and comply with the rules of procedure and court orders." ECF No. 155 at 10. This Court has long recognized:

> The authority of a federal trial court to dismiss a plaintiff's action with prejudice because of his failure to prosecute cannot seriously be doubted. The power to invoke this sanction is necessary in order to prevent undue

[9] Respondents deny these baseless accusations.
[10] Respondents do not oppose Petitioner's request to proceed *in forma pauperis*.

> delays in the disposition of pending cases and to avoid congestion in the calendars of the District Courts. The power is of ancient origin, having its roots in judgments of nonsuit and non prosequitur entered at common law and dismissals for want of prosecution of bills in equity.

Link v. Wabash R. Co., 370 U.S. 626, 629–30 (1962) (internal citations omitted). Accordingly, "a District Court may dismiss a complaint for failure to prosecute even without affording notice of its intention to do so or providing an adversary hearing before acting." *Id.* at 633. Here, there is no question that Petitioner received notice and an opportunity to respond before his lawsuit was dismissed with prejudice as a sanction for his failure to prosecute it.

Dismissal under Rule 41(b) is reviewed for abuse of discretion. *Id.* (explaining that whether a dismissal order under Rule 41(b) survives appellate scrutiny depends on whether the District Court acted "within the permissible range of the court's discretion"); *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1161 (10th Cir. 2007) (citing *Olsen v. Mapes*, 333 F.3d 1199, 1204 (10th Cir. 2003); *Petty v. Manpower, Inc.*, 591 F.2d 615, 617 (10th Cir. 1979)); *see also McDaniel v. City & County of Denver*, 626 F. App'x 216, 216–17 (10th Cir. 2015) ("We review a district court's dismissal of an action under Rule 41(b) based on a party's failure to comply with a court order for an abuse of discretion." (citing *Gripe v. City of Enid*, 312 F.3d 1184, 1188 (10th Cir. 2002))).

In the Tenth Circuit, before a district court can impose the sanction of dismissal with prejudice, the court must consider the criteria set forth in *Ehrenhaus v. Reynolds*, 965 F.2d 916, 921 (10th Cir. 1992), which include: (1) the degree of actual prejudice to the defendant; (2) the amount of interference with the judicial process;

(3) the culpability of the litigant; (4) whether the court warned the party in advance that dismissal of the action would be a likely sanction for noncompliance; and (5) the efficacy of lesser sanctions. *Nasious*, 492 F.3d at 1162 (quoting *Olsen*, 333 F.3d at 1204).

The record amply demonstrates that the District Court did not abuse its discretion in dismissing Petitioner's lawsuit with prejudice. In ruling on Respondents' motion for sanctions in April 2023, Judge Rankin examined the procedural history of the case at length, including Petitioner's multiple meritless motions to disqualify and groundless appeals, as well as his repeated failures to appear at court-ordered hearings and to participate in discovery. ECF No. 131 at 1–6. Judge Rankin then proceeded to analyze each *Ehrenhaus* factor. *Id.* at 6–11. As to the first factor, Judge Rankin found Respondents "suffered substantial and severe prejudice" because they had been "precluded from conducting discovery of any kind or obtaining any information surrounding this case." *Id.* at 7. After detailing Petitioner's various discovery failures, Judge Rankin concluded that "[Petitioner]'s failure to participate in discovery has prevented [Respondents] from investigating the claims and preparing a defense." *Id.* at 8.

As to interference with the judicial process, Judge Rankin found: "Both the Court and [Respondents] have spent time, energy, and resources preparing to address [Petitioner]'s failure to participate in this his own case" but "[r]ather than discuss the merits of the case, or move the case forward, [Petitioner] attacks the credibility of defense counsel and the Court." *Id.* at 8. Judge Rankin noted Petitioner's various

failed attempts at meritless interlocutory appeals and concluded that his "actions have interfered with the judicial process unnecessarily and without justification." *Id.* at 9.

As to culpability, Judge Rankin unequivocally found that Petitioner "has shown a repeated pattern of refusing to participate with [Respondents'] counsel and ignoring Court hearings and deadlines" and that Petitioner therefore was "culpable for the status of this case." *Id.* With regard to prior warning, Judge Rankin noted that Petitioner "has been warned on multiple occasions that failure to participate in discovery and comply with Court orders could result in the dismissal of his case" and detailed each such warning. *Id.* at 9–10.

As to the final *Ehrenhaus* factor, the efficacy of lesser sanctions, Judge Rankin opined that lesser sanctions were appropriate prior to dismissal and ordered Petitioner to "pay for [Respondents'] reasonable costs incurred in addressing [Petitioner]'s discovery deficiencies."[11] *Id.* at 10–11. Judge Rankin again admonished Petitioner: "Additionally, [Petitioner] is again placed on notice that he must strictly adhere to deadlines and other court orders, and any failure to do so will likely result in dismissal of his action." *Id.* at 11. Characterizing Petitioner's failures as "egregious," Judge Rankin stated in no uncertain terms that "any future delays, failures to participate in the litigation of this action, failures to participate in

[11] Defendants submitted a bill of costs, to which Plaintiff objected. ECF Nos. 134, 138. No final order on fees was entered and the District Court rendered the fee award moot subsequent to issuing its final judgment. ECF No. 157.

discovery, or meet a Court imposed deadline will likely result in the dismissal of the action." *Id.* at 12–13.

But Petitioner refused to reform his conduct. Instead, he continued to lodge outlandish accusations at Respondents and their counsel in his motions for injunctive relief and for sanctions. ECF Nos. 140, 141. He refused to meet and confer with Respondents on a date for his deposition and refused to appear at his properly noticed deposition. ECF No. 153-1 at 2–3. In light of Petitioner's continued obstructive behavior and failure to abide by the District Court's scheduling order, Respondents renewed and supplemented their motion to dismiss. ECF Nos. 142, 153.

The District Court, again considering each of the *Ehrenhaus* factors, this time with the additional failure of Petitioner to appear for his properly noticed deposition, granted Respondents' motion and dismissed Petitioner's claims with prejudice. ECF No. 155. As to prejudice, the District Court found Petitioner's "many failures to prosecute the action, outright refusals to participate in the exchange of discovery, and multiple missed hearings with the magistrate judge have caused substantial actual prejudice to [Respondents]." *Id.* at 7. In particular, the District Court noted the prejudice caused to Respondents by Petitioner's actions because "[Respondents] were unable to depose [Petitioner] prior to the discovery deadline." *Id.* at 8.

As to interference, the District Court concluded that Petitioner's "recent refusal to make himself available for a deposition has continued his multi-year pattern of interfering with the judicial process without justification." *Id.* As to culpability, the District Court characterized Petitioner's actions as "willful" and

"wrongful" and concluded that "[Petitioner] is culpable for the delay in this case and for failing to appropriately engage in the litigation process." *Id.* at 8–9.

The District Court recounted the warnings issued to Petitioner in Judge Rankin's sanctions order, including that future failures to participate in litigation or discovery would result in dismissal of the action. *Id.* at 9. Nevertheless, just a few months later, Petitioner "willfully refused to participate in the litigation of this action and willfully refused to participate in discovery." *Id.*

The District Court concluded its review of the *Ehrenhaus* factors by finding that Petitioner himself had "proven that a sanction short of dismissal will not correct his abusive misconduct or convince him to comply with his legal obligations." *Id.* at 10. "Indeed, [Petitioner]'s own actions demonstrate he is not interested in resolving his claims on their merits, and the Court will not abide [Petitioner]'s use of the judicial system as a tool of harassment." *Id.* As such, the District Court dismissed Petitioner's claims with prejudice under Rule 41(b) and denied his motions for injunctive relief and for sanctions as moot. *Id.* The District Court was well within the bounds of its discretion in making these rulings.

The Petition fails to cite the applicable legal standard or argue that the District Court erred in its analysis of any of the *Ehrenhaus* factors. For that reason alone, the Petition should be denied. *See Rocky Mountain Wild, Inc. v. U.S. Forest Serv.*, 56 F.4th 913, 926–27 (10th Cir. 2022) (noting that to preserve issues for appeal, "a party must draft arguments that go beyond general claims of error" and include citations to authorities on which the appellant relies because "[j]udges are not like pigs,

hunting for truffles buried in briefs" (internal citations omitted) (brackets in original)). Petitioner fails to set forth any cogent legal argument whatsoever in support of his contention that it was error for the District Court to dismiss his case pursuant to Rule 41(b).

In fact, he cannot demonstrate an abuse of discretion here. The District Court provided Petitioner chance after chance to comply with its orders and conform his conduct. When Petitioner refused, the District Court engaged in a careful analysis of the *Ehrenhaus* factors and found—correctly—that dismissal was warranted. *See Raiser v. Brigham Young Univ.*, 297 F. App'x 750, 752 (10th Cir. 2008) (affirming dismissal as sanction for plaintiff failing to appear at deposition where "the record reveal[ed] a careful consideration of each of the [*Ehrenhaus*] factors leading to the district court's ultimate conclusion that Raiser's repeated non-compliance warranted the harshest of sanctions").

The Tenth Circuit Court of Appeals affirmed the District Court's careful analysis. *See Carter*, No. 23-8079, 2024 WL 4491802, at *2 ("The district court acted within its discretion in dismissing Mr. Carter's claims as a sanction for his litigation misconduct.").

"The simple fact is that no litigant, even a pro se litigant, may repeatedly disregard a court's orders without inviting the lawful possibility that his case might be dismissed." *Cook v. Cent. Utah Corr. Facility*, 446 F. App'x 134, 135 (10th Cir. 2011) (citing *Lee v. Max Int'l, LLC*, 638 F.3d 1318, 1321–24 (10th Cir. 2011)). As it

relates to the dismissal of Petitioner's lawsuit, there is no basis for this Court to grant Petitioner's Petition.

B. The District Court Properly Acted Within its Discretion in Denying Petitioner's Motions for Sanctions and Injunctive Relief

The District Court did not err in denying Petitioner's motions for sanctions and injunctive relief as moot. Petitioner, through his motions, sought a preliminary injunction, as well as summary judgment in his favor in the amount of $2,854,500. ECF No. 140 at 6–7; ECF No. 141 at 10–12. He now complains the District Court should have ruled on these motions before dismissing his lawsuit. But the discretion of the District Court in procedural matters, such as the order in which to consider the motions brought before it, has been deeply ingrained in American jurisprudence for more than 125 years. As this Court articulated as far back as 1893:

> It is well settled that mere matters of procedure, such as the granting or refusing of motions for new trials, and questions respecting amendments to the pleadings, are purely discretionary matters for the consideration of the trial court, and unless there has been gross abuse of that discretion they are not reviewable in this court on writ of error.

Mexican Cent. Ry. Co. v. Pinkney, 149 U.S. 194, 201 (1893); *see also Clark v. State Farm Mut. Auto. Ins. Co.*, 590 F.3d 1134, 1140 (10th Cir. 2009) ("[D]istrict courts generally have broad discretion to manage their dockets."(internal quotation marks and citation omitted)).

Here, the District Court acted squarely within the bounds of its discretion when it granted Respondents' motion and dismissed Petitioner's lawsuit before reviewing and ruling on Petitioner's motions for sanctions and injunctive relief. Indeed, the Tenth Circuit Court of Appeals noted no error in the District Court's

management of its docket. *Carter*, 2024 WL 4491802, at *3. As such, this issue provides no basis for the Court to grant the Petition.

C. The District Court Did Not Reach the Merits of Petitioner's Claims Due To his Own Dilatory Conduct

Petitioner takes issue with the District Court's purported failure to apply the legal standard of SOX to his claims. He notes that this Court recently unanimously held that a SOX whistleblower "bears the burden to prove that his protected activity 'was a contributing factor in the unfavorable personnel action alleged in the complaint.'" *Murray v. UBS Sec., LLC*, 601 U.S. 23, 39 (2024) (quoting 49 U. S. C. § 42121(b)(2)(B)(i)).

The District Court did not reach the merits of Petitioner's SOX claims because of Petitioner's own dilatory conduct, as explained at length in the District Court's order of dismissal. *See* ECF No. 155 (analyzing *Ehrenhaus* factors). The District Court did not abuse its discretion in dismissing Petitioner's lawsuit with prejudice due to his repeated pattern of litigation abuse, as discussed above. This argument provides no grounds upon which to grant the Petition.

D. On its Face, SOX Does Not Apply To Respondents' Counsel or the Court During the Pendency of Litigation

Petitioner asks this Court to consider whether the provisions of SOX forbidding discrimination in employment should apply to attorneys and judges during the pendency of a SOX lawsuit. The plain language of the statute already answers that question in the negative, providing no basis for this Court to grant the Petition.

The whistleblower retaliation protection provisions of SOX make it illegal for any company, including "any officer, employee, contractor, subcontractor, or agent of

such company or nationally recognized statistical rating organization" to "discharge, demote, suspend, threaten, harass, or in any other manner discriminate ***against an employee in the terms and conditions of employment*** because of any lawful act done by the employee" pursuant to SOX. 18 U.S.C. § 1514A(a) (emphasis added). Thus, the statute's plain language makes clear that only actions related to the terms and conditions of an individual's employment—hiring, firing, demotions, promotions, and other attendant circumstances of an employment relationship—are actionable under SOX's whistleblower anti-retaliation provisions.

Section 1514A addresses discrimination in employment—not actions taken in the course of litigation, years after an employment relationship is ended. To state a *prima facie* case of discrimination, "[a] claimant must show: (1) she engaged in protected activity or conduct; (2) the ***employer*** knew of her protected activity; (3) she suffered an ***unfavorable personnel action***; and (4) her protected activity was a contributing factor in the ***unfavorable personnel action***." *Lockheed Martin Corp. v. Admin. Rev. Bd., U.S. Dep't of Lab.*, 717 F.3d 1121, 1129 (10th Cir. 2013) (citing 18 U.S.C. § 1514A(b)(2)(C); 49 U.S.C. § 42121(b); 29 C.F.R. § 1980.104(b)(1); *Harp v. Charter Commc'ns, Inc.*, 558 F.3d 722, 723 (7th Cir. 2009)) (emphasis added).

There is no textual basis in Section 1514A, or in the case law interpreting Section 1514A, to support a conclusion that it is meant to apply to actions taken by attorneys and judges in the course of litigation. Petitioner provides no authority or legal argument to support his novel assertion that Section 1514A should apply in

such circumstances. Failing any such authority, this foundationless argument provides no basis upon which to grant the Petition.

E. Respondents Are Not State Actors and Cannot Be Liable for Violations of Constitutional Rights

Similarly, to the extent Petitioner complains that Respondents' conduct deprived him of certain Constitutional rights, such argument provides no basis for granting his Petition. In general, Constitutional protections apply only to actions undertaken by the government, not by private actors. *See, e.g.*, *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 924 (1982) ("Because the [Fourteenth] Amendment is directed at the States, it can be violated only by conduct that may be fairly characterized as 'state action.'"); *Pub. Utilities Comm'n of D.C. v. Pollak*, 343 U.S. 451, 461 (1952) ("These [First and Fifth] Amendments concededly apply to and restrict only the Federal Government and not private persons." (citations omitted)); *Burdeau v. McDowell*, 256 U.S. 465, 475 (1921) ("The Fourth Amendment gives protection against unlawful searches and seizures, and as shown in the previous cases, its protection applies to governmental action.").

Respondents are not government actors and therefore cannot be held liable for any alleged violation of Petitioner's Constitutional rights. As a result, this issue presents no basis to grant the Petition.

F. The District Court's Orders Are Not Void *Ab Initio*

Petitioner claims that Judge Rankin was untruthful in responding to the judicial questionnaire he completed in connection with his consideration to be appointed a District Judge for the District of Wyoming. Petitioner fails to offer any

authority for the position that a misrepresentation on a judicial questionnaire renders any order issued by the judicial nominee prior to completing the questionnaire void *ab initio*. Petitioner cites to the section of the United States Code providing for the appealability of final judgments for the highest court of a State. 28 U.S.C.A. § 1257. He references the regulatory section addressing fraud and misrepresentation for the purposes of the Securities and Exchange Act of 1934. 17 C.F.R. § 240.15c1-2. Neither authority has any relevance to Petitioner's argument.

Petitioner also relies on Rule 60 of the Federal Rules of Civil Procedure, specifically those sections permitting relief from a judgment when an opposing party engages in fraud, the judgment is void, or there is fraud on the court. Fed. R. Civ. P. 60(b)(3)–(4), (d)(3). He fails to explain how a judicial questionnaire completed after the entry of a final judgment satisfies any of those circumstances such that relief under Rule 60 is warranted here.

In addition, Petitioner directs the Court to the statute prohibiting employment discrimination against employees who participate in a prosecution concerning major fraud against the United States. 18 U.S.C. § 1301. Once more, Petitioner fails to explain what, if anything, this provision has to do with his position that Judge Rankin's orders are void *ab initio*. Petitioner did not participate in prosecution concerning major fraud against the United States and this statutory provision is wholly irrelevant to his argument.

Finally, Petitioner directs this Court to various sections of the United States Code related to the bias or prejudice and the disqualification of judges. 28 U.S.C.

§§ 144, 455. He fails to explain how the judicial questionnaire Judge Rankin completed demonstrates any bias or prejudice on the part of Judge Rankin or otherwise demonstrates that Judge Rankin should have recused himself in the underlying lawsuit. In addition, these statutory provisions do not support any conclusion that Judge Rankin's orders are void *ab initio*.

As with Petitioner's other arguments, his assertion that Judge Rankin's responses to a judicial questionnaire render the orders in this matter void *ab initio* finds no support in the facts or the law and further provides no basis upon which to grant his Petition.

CONCLUSION

In light of the foregoing, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Nicole S. LeFave
LITTLER MENDELSON, P.C.
100 Congress Avenue
Suite 1400
Austin, TX 78701
(512) 982-7250
nlefave@littler.com

Attorney for Respondents

CERTIFICATE OF SERVICE

Pursuant to Rule 29.3 of the Supreme Court Rules, the undersigned counsel certifies that a true and correct copy of the foregoing was served on *pro se* Petitioner, Austin Roger Carter, by delivery to a commercial carrier on April 23, 2025, for delivery to Petitioner within three calendar days, and by electronic mail at the addresses indicated below:

Austin Roger Carter
96 MT HWY 2 E
Whitehall, Montana 59759
(307) 705-2159 – Telephone
austinrcarter@hotmail.com

Nicole S. LeFave, *Counsel of Record*