No. 25-244

IN THE

Supreme Court of the United States

DEMETRIC SIMON,

Petitioner,

v.

KEITH GLADSTONE, *et al.*,

Respondents.

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

SUPPLEMENTAL BRIEF

MICHAEL WEIN
Counsel of Record
LAW OFFICES OF MICHAEL A. WEIN, L.L.C.
7845 Belle Point Drive
Greenbelt, Maryland 20770
(301) 441-1151
weinlaw@hotmail.com

Counsel for Petitioner

October 15, 2025

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

TABLE OF CONTENTS

TABLE OF CITATIONS

Federal Cases

Constitutional Provisions, **Statutes, and Rules**

Other Authorities

SUPPLEMENTAL BRIEF UNDER SUPREME COURT RULE 15.8, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

1. **<u>This Court's Recent "Call For Response" On the *Emigrant* Case Out Of The Second Circuit Raising The Same Or Very Similar Legal Issues Of "Fraudulent Concealment," "Equitable Tolling" And/Or "Equitable *Estoppel*," Justifies This Court Issuing A Call For Response For Simon's Case As Well Out Of The Fourth Circuit.</u>**

This Court on September 15, 2025, recently issued a Call for Response (CFR) in *Emigrant Mortgage Co., v. Saint-Jean,* (No. 25-229), which was discussed at length in Petitioner Simon's Petition, as part of a Circuit Split. *See,* <u>Certiorari Petition, *Simon v. Gladstone, et. al.*, No. 25-244,</u>, pg. 31 ("This Court should adopt the Second Circuit's case law in *Emigrant*. Certiorari is justified as well in Mr. Simon's case, (or otherwise held for *Emigrant,* if that case is granted Certiorari) as Civil Rights defendants and their victims, are frequently intentional torts, with the added risk that they may 'control the mechanisms of justice.'")

Quite simply, if Demetric Simon's Civil Rights case was decided in the Second Circuit and constituent District Courts, Mr. Simon's case would have proceeded through at least depositions and full discovery. A classic "circuit split." Under the Second Circuit's approach, litigants subject to situations akin to Petitioner, have specific, well-defined, and flexible rules, supporting Courts denying pre-discovery Motions to Dismiss based on Statute of Limitations, and in favor of "fraudulent concealment" and related doctrines being considered, and properly being examined through discovery.

No normal criminal defendant in Simon's position, could or would have filed a Civil Rights suit back in 2014, when the corrupt police officers, went to great lengths to conceal their existence and the existence of a civil rights conspiracy. It took the combined efforts and significant resources of the Maryland United States's Attorney's Office, to uncover this particular conspiracy, at about 4 years after the crime occurred. At the very least, the Motion to Dismiss should have been denied, to properly allow discovery on these facts, with the highly favorable Standard of Review appropriate.

In addition to *Emigrant's* approach, applying to a wider array of cases in the Second Circuit, this is also, the position taken in the Dissent, in the recent Fifth Circuit published Opinion of *Jenkins v. Tahmahkara,* 151 F.4th 730 (5th Cir. Dec. Aug. 19, 2025), *infra.* The Fifth Circuit, with *Jenkins,* has confirmed a Circuit Split is engrained in these type of cases, and particularly highlighted in §1983 cases, in the face of egregious and intentional governmental misconduct.

When Mr. Simon, was sent and received victim notification in March 2019 from the U.S. Government (within the five years Statute of Limitations for *criminal* civil rights conspiracy violations to be indicted), he later sought civil redress for the civil rights within three years, for the Constitutional violations created by the cabal conspiracy of police officers in the GTTF who *specifically* harmed him.

Petitioner Simon should have been allowed to fully flesh out how even if *arguendo* the Statute of Limitations had passed, he was a victim of a pernicious conspiracy, undiscovered until the Federal prosecutors got wind, and notified Petitioner. Respondents regularly engaged in the pattern of what happened in Simon's case including the pattern and practice of false police reports, court testimony, and planting weapons, in the comprehensive 660-Page GTTF Steptoe Report (with hyperlink) and thus the "Fraudulent Concealment," "Equitable Tolling" and/or "Equitable *Estoppel*" doctrines applied to defeat a 12(B)(6) Motion to Dismiss.

Instead, the lack of decisional bases in the Fourth Circuit (there are none reported, though at least four (4) were in the Briefing below that originating from the Maryland Federal District Courts), made this a Question of First Impression in the Fourth Circuit, and this Court as well, with a confirmed Circuit Split between the Second and Fifth Circuits, and other Circuits, similarly lacking consistent case law, to the Fourth Circuit.

In this case, it is uncontested Simon was a victim in 2014 of (1) multiple police officers who engaged in a pernicious conspiracy against Mr. Simon, an innocent victim of a Baltimore Officer running him over with his car, (2) these three officers (Gladstone, Hankard and Vignola) kept secret their presence from having been at the scene, while framing Simon with a planted weapon after he was already hauled to the hospital, intending to (and succeeding at the time) in exculpating their police supervisor, while cruelly allowing Simon to languish in jail for about a year, and (3) until a Federal investigation though hard work and happenstance, discovered the criminal conspiracy to deprive Mr. Simon of his Civil Rights, including lying to grand juries investigating the crimes, made public the conspiracy in March 2019 by the unsealed indictment of Officer Gladstone.

Beforehand, the conspirators' criminal and unconstitutional behaviors were claimed to not be even known by the Baltimore City Police Department, and completely unknowable. And yet the Respondents have thus far succeeded, in not allowing discovery to begin, despite uncontroverted evidence of the extreme lengths taken by the three BPD officers, consistent with years of similar patterns of behaviors approved by the Baltimore leadership, to conceal their existence and role in framing Simon. The Civil Rights suit, was then filed within three years of this first public disclosure. Framing an innocent man, and ensuring he spent near a year in jail, to protect the corrupt officers' colleague from being investigated, was a fraud on the Court system, and should not be rewarded by the Federal Courts. The important role §1983 cases have, to protect against deprivations of Civil Rights, guaranteed under the United States Constitution, should be protected and not subject to "Kafkaesque procedural obstacles for ordinary Americans seeking to hold government officials accountable for violations of constitutional rights." *Jenkins v. Tahmahkera*, 151 F.4th 739, * 41 (5th Cir. 2025)(Dissent, J. Higginson)

Classic Supreme Court cases have held similarly, but those cases have been forgotten or cast aside in the wake of modern pleadings. But they are no less persuasive, to consider in addressing the present Circuit Split that exists, when it comes to how "Motions to Dismiss," including now under the *Twombly* standard, should be handled by Federal District Courts. *See, e.g. Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 555-556 (2007).

Thus, and later adopted in *Bailey v. Glover,* 88 U.S. (21 Wall.) 342, 349 (1874), as Justice Joseph Story opined as Circuit Justice, the basic and important common law underlying of "fraudulent concealment"—"the point is not, whether mere ignorance of the fact on the part of the plaintiff ought to remove the bar; but whether this ignorance, resulting from the fraudulent concealment of the fact by the defendant, ought to have that effect. […] [T]he court would violate a sound rule of law, if it permitted the defendant to avail himself of his own fraud.").

Sherwood v. Sutton, 21 F. Cas. 1303, 1307 (N.H. 1828)(J. Story)(Circuit Judge).

2. **The Fifth Circuit, Recently In *Jenkins V. Tahmahkera*, 151 F.4th 739 (5th Cir. Dec. Aug. 19, 2025), Has Created A More Entrenched Circuit Split On Question Presented Number One On The Proper**

Procedure and Standard To Be Adopted For Statute Of Limitations At The Motion To Dismiss Stage, In Civil Rights Cases Which Plausibly Plead, And Display "Equitable Tolling," "Equitable Estoppel," And "Fraudulent Concealment" Doctrines.

Recently, the Fifth Circuit, issued a decision in *Jenkins v. Tahmahkera,* 151 F.4th 739 (5th Cir., Dec. August 19, 2025)[1]. In the divided opinion, with a Concurrence and Dissent, the Fifth Circuit ultimately concluded, contradicting with the approach and case law of the Second Circuit in *Saint Jean v. Emigrant Mortg. Co.,* 129 F.4th 124 (2nd Cir.), constituting a Circuit Split in this case.

---

[1] The Fifth Circuit case came out ten days before the filing done in Simon's Petition on August 29, 2025. Although Petitioner's Counsel is a member of the Fifth Circuit Court of Appeals, and of the "Bar Association of the Fifth Federal Circuit" (BAFFC), which outlines new cases most weekdays—in the case of *Jenkins v. Tahmahkera*, *supra,* the BAFFC email describing the case was received at about 8:01 PM, EST on August 29, 2025, the same day, but after the Certiorari Petition in *Simon* was printed and filed. Thus, as a matter of unfortunate timing, this recent case was not easily or regularly knowable to include in the original Petition explaining the Circuit Split for this Court's attention.

The Fifth Circuit's cases of *Jenkins*, similar to *Simon's* in the Fourth Circuit, provides a perverse public policy incentive that criminal civil rights conspiracies, need only be undiscovered for 3 years by the controlling jurisdiction to avoid reasonable compensation by victims. Nevertheless, the Fifth Circuit Majority maintains an approach, quite similar with that of Simon's trial judge and Fourth Circuit Panel opinion, including (1) it's a §1983 action, and (2) done as a preliminary Motion to Dismiss, filed under 12(b)(6).

As discussed by the Fifth Circuit's Majority below:

> "Concluding that Jenkins's claims were barred by the statute of limitations, the district court rejected her alternative contention that equitable tolling should work to save her claims. […]
>
> […]
>
> Under federal law, a cause of action accrues when the plaintiff knows or has *reason to know of the injury which is the basis of the action*." […] ["As a result, the limitations period begins 'when the plaintiff is in possession of the critical facts that he has been hurt and *who has inflicted the injury*.'" […] More precisely, it begins the moment "the plaintiff is *or should be* aware of the causal connection between his injury and the acts of the defendant." *Stewart v. Parish of*

> *Jefferson*, 951 F.2d 681, 684 (5th Cir. 1992). She need not have actual knowledge of every fact necessary to file suit, and she need not know that she has a legal claim. […] Instead, "she need know only the facts that would ultimately support a claim," […], or be aware of "circumstances [that] would lead a reasonable person to investigate further." [,,,] [Citations Omitted] [Emphasis Added]
>
> *Jenkins v. Tahmahkera,* 151 F.4th 739, *10-12 (5th Cir., 2025)

Notably, the Fifth Circuit, in contrast to the Second Circuit in *Saint-Jean v. Emigrant,* and similar to the Fourth Circuit below in *Simon,* refuses any less strict regimen of dismissals allowing the case to proceed to at least discovery, . The Majority, explicitly refuses to consider "unfairness" to be a proper consideration for both the trial and appellate courts. Any conceptions of "fairness" are thrown out, which in contrast, this "unfairness" is a significant factor for the Majority's Opinion in the Second Circuit's *Emigrant* case; yet, considered *verboten* by the Majority's Opinion in the Fifth Circuit's *Jenkins* case.

An interesting dynamic, displaying the opposite approach, is reflected in the Second Circuit's Minority's Opinion in *Emigrant* (being argued by the Petitioner in this Court), saying "fairness" is not something trial and appellate judges may consider in even pre-discovery Motions to Dismiss based on Statute of Limitations, whilst the Minority Opinion in *Jenkins,* relates how dramatically unfair equitable circumstances, are a factual issue at the very least, examinable ultimately by a jury, not a judge, and not without at the very least, the opportunity for discovery to flesh out the details.

This is also what happened to Petitioner Simon, in the Fourth Circuit's Opinion, adopting the Maryland Federal Court's Opinion below. Instead, Petitioner contends, the open Question of Law, should adopt the Second Circuit's long-standing, consistent, and entrenched precedent, nationwide.

> "Statutes of limitations are generally subject to equitable tolling where necessary to prevent unfairness to a plaintiff who is not at fault" for lateness in filing. […] "The taxonomy of tolling, in the context of avoiding a statute of limitations, includes at least three phrases: equitable tolling, fraudulent concealment of a cause of action, and equitable estoppel." […] We conclude here that the doctrine of equitable tolling applies to render [Respondents *Saint-Jean*, *et. al.*] claims timely in this case."

Saint-Jean v. Emigrant Mortg. Co., 129 F.4th 124, 142 (2nd Cir. 2025).

Judge James Ho, in a brief Concurrence with Judge Wilson to form the Majority in *Jenkins,* noted "[e]nforcing rules like statute of limitations can seem deeply unjust at times. But even the most minor violations of limitations have resulted in forfeited claims—regardless of the merits[…]" *Id.* at *17.

Judge Stephen Higginson's Dissent Opinion, however, consistent with the Second Circuit's more relaxed, fact-based, and pro-discovery approach in *Emigrant,* and is particularly related and apt to the facts and law in Simon's case. The Dissent noted further *infra,* how the Majority was not properly applying Fifth Circuit precedent, that was earlier consistent with the Second Circuit's approach, on the open Question of Law.

The Dissent believed the plead facts supported Government agents as bad actors, shouldn't be cut off at the outset, especially when facts support the bad actors, directly or indirectly, were seeking to stymie investigation and discovery, of serious official misconduct which plausibly violated § 1983. In *Jenkins,* the Plaintiff, after being handed a faked autopsy her husband's death in custody was "natural causes" when it was actually due to suffocation while in "metal restraints" after being "repeatedly pepper-sprayed." *Id.* at * 20. This was intentionally withheld for years later, on the actual cause of death, and the Government agents' names responsible.

> "[…] Instead, the government misstated the cause of death and disseminated a false autopsy report. Jenkins diligently sought but could

not obtain any additional information, so she filed suit against the County. But the government continued to withhold the records Jenkins needed, and in February 2022 her suit was dismissed.

[…]

The majority opinion now sustains that *patently unfair result. The majority charges that the limitations period started to run in August 2019 at the moment Jenkins learned that her husband had died, before she knew any of the individual defendants' identities.* The majority then determines as a *matter of law* that Jenkins, who repeatedly attempted to contact DPS and then sought records using judicial process, did not exert reasonable efforts to investigate her claims within that period. [Emphasis Added]

That is legal error that is particularly unjustified on these facts. Our case law makes clear that the claims accrued only once Jenkins had reason to know the identities of those involved in the events of her husband's death, which, given the government's stonewalling, could not have occurred until at least 2022,

> when Jenkins finally received access to the records she had been seeking. And it was the government's doing, not her own, that deprived Jenkins of access to the records up to that point.
>
> […] When a plaintiff "raise[s] questions of fact," it is "inappropriate to dispose of the case by dismissal." *Id.* The majority's accrual analysis amounts to faulting Jenkins for not jumping, at the moment she was informed of her husband's death in government custody, to what would have been a conclusion unsupported by any evidence at all that he was killed by the state. But whether her reaction was reasonable depends on its factual context." *Id.* at *25-26.

The terrible public policy involved, is not lost on Judge Higginson's Dissenting Opinion and was also argued by Simon below. This Court should consider the outsized impact, of "sophisticated" local Governmental entities, evading the application of the United States Constitution, and appropriate monetary compensation, though obfuscation and deception. That could not have been the intention of Congress when §1983 was adopted.

> "By taking a contrary approach, the majority opinion provides government defendants with a recipe for evading § 1983 liability. If plaintiffs can be

required to file their claims before they know the identities of any defendants, and limitations will run even as the plaintiff remains unable to determine whom they must sue, then all the government needs to do to keep officers from being held accountable is to cloister them from identification while the limitations period runs. That is plainly inconsistent with § 1983's command that '[e]very person" who deprives another of civil rights under color of state law "shall be liable to the party injured.'"

[…]

The majority opinion affirms dismissal of dire and unresolved allegations of a government killing and cover-up. In doing so, the majority opinion disregards governing law and the guiding principles of § 1983. Worse, it encourages government officials to run out statutes of limitations by concealing information about lethal misconduct.

These missteps raise concerns in and of themselves, but they are especially concerning in their broader context. Official defendants in suits like these already are generally protected by qualified immunity. To that daunting

> substantive gauntlet, the majority now adds *Kafkaesque* procedural obstacles for ordinary Americans seeking to hold government officials accountable for violations of constitutional rights."
>
> *Jenkins v. Tahmahkera*, 151 F.4th 739, * 29-30, 40, 41 (5th Cir. 2025)

CONCLUSION

For the foregoing reasons, Petitioner Demetric Simon respectfully requests the Supreme Court of the United States grant review of this matter. Should this Court grant Certiorari in *Emigrant Mortgage Co. et. al.,* v. *Saint-Jean,* No. 25-229, it is respectfully requested that this Court grant Certiorari for *Simon v. Gladstone et. al.,* as well, or in the alternative, ***HOLD*** *Simon* for a disposition on the merits in *Emigrant.*

Alternatively, it is requested this Court consider the foregoing Petition as appropriate for this Court's consideration on Summary Reversal, based on the straightforward arguments presented in the claims for relief, in Question Presented #3, reproduced in the Appendix to the Certiorari Petition, (46a-61a), specifying individual pages that directly addressed Petitioner Simon being victimized by the Respondents in the 660-Page Steptoe Report, yet were specifically stated by the Federal District Court Judge would not be considered, in her granting the Motion to Dismiss.

Respectfully Submitted,

Michael Wein, Esquire
Counsel of Record
Law Offices of Michael A. Wein, LLC
7845 Belle Point Drive
Greenbelt, MD 20770
(301) 441-1151
weinlaw@hotmail.com

Counsel for Petitioner Simon