No. 25-355

In the Supreme Court of the United States

JAMES DONDERO; HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.; THE DUGABOY INVESTMENT TRUST; NEXPOINT REAL ESTATE PARTNERS, LLC; AND GET GOOD TRUST,

Petitioners,

v.

STACEY G. JERNIGAN; HIGHLAND CAPITAL MANAGEMENT, L.P.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

JEFFREY N. POMERANTZ
JOHN A. MORRIS
GREGORY V. DEMO
JORDAN A. KROOP
HAYLEY R. WINOGRAD
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd. 13th Fl.
Los Angeles, CA 90067
(310) 277-6910

ROY T. ENGLERT, JR.
Counsel of Record
BRANDON L. ARNOLD
PAUL BRZYSKI
SHIKHA GARG
HERBERT SMITH FREEHILLS KRAMER (US) LLP
2000 K Street NW, 4th Fl.
Washington, DC 20006
(202) 775-4500
roy.englert@hsfkramer.com

Counsel for Respondent Highland Capital Management, L.P.

CORPORATE DISCLOSURE STATEMENT

Highland Capital Management, L.P., has no parent corporation, and no publicly held company owns 10% or more of its stock.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

Miscellaneous

BRIEF IN OPPOSITION

PRELIMINARY STATEMENT

Serial litigator and adjudicated contemnor James Dondero drove his own company into bankruptcy. Then, when he did not get his way in the bankruptcy case, he threatened to "burn the place down."

Part of Dondero's arson campaign has been to impugn the integrity of a respected United States Bankruptcy Judge at now ***four levels*** of the federal judiciary through ***five*** recusal motions, ***two*** mandamus petitions, ***two*** appeals (one still pending), ***two*** rehearing petitions, and now a petition for a writ of certiorari. ***No judge*** has agreed with Dondero's arguments under any standard of review. ***No judge*** has accepted Dondero's version of the facts as supported by the record.

Dondero now comes to this Court trying to play a victim, with the support of a group of his former employees masquerading as "investment professionals concerned with judicial impartiality." Brief for Investment Professionals Concerned with Judicial Impartiality as Amici Curiae in Support of Petitioners at 1. This petition is Dondero's latest gambit to wipe away the progress made in the Highland bankruptcy and undo the chapter 11 plan that he has fought against for years. The Court should deny certiorari for myriad reasons.

First, the questions presented in the petition are not implicated by this case or the decisions below. Contrary to the central premise of the questions presented, the Fifth Circuit did not review the *bankruptcy court's* recusal order. And no court held that

recusal is left to the bankruptcy judge's own discretion. Rather, the *district court* denied mandamus because, under the long-settled standard for justifying that extraordinary relief, petitioners had not shown a "clear and indisputable" right to relief. The Fifth Circuit reviewed the *district court's* denial of mandamus for abuse of discretion and found none.

Moreover, even if the questions were presented, this case would be an exceedingly poor vehicle to address either. Petitioners never entered the novels—the sole evidence of supposed bias—into the record. So, even if the Fifth Circuit should have conducted some sort of *de novo* review, as petitioners advocate, that court wouldn't have been able to evaluate the novels, which are fiction unrelated to this case. Petitioners' attempt to slip them into the record before this Court is too little, too late. That alone should be the end of the matter.

The recusal motions were also plainly untimely. The Highland bankruptcy was transferred to Judge Jernigan in December 2019, but petitioners did not raise recusal at all until March 2021, *after* plan confirmation. Even then, petitioners did not raise the novels (one of which had been published two years earlier). Only in March 2023—after the Fifth Circuit had affirmed the confirmation order—did they seek recusal based on the novels.

Parties cannot wait until they receive adverse rulings to seek recusal. And Dondero—an adjudicated contemnor and vexatious litigant—is a paradigmatic example of a petitioner with unclean hands based on his conduct before this Court and the lower courts, which is reason enough to deny certiorari and to deny mandamus.

Furthermore, there is no circuit conflict that warrants this Court's intervention. The first split identified in the petition, if it exists at all, is well on its way to resolution. And the second split is entirely imagined. This Court has previously denied certiorari for similar questions about the standard of review for recusal motion denials, and it should do so again here.

Finally, the Fifth Circuit's decision is correct. It applied the correct standard of review because mandamus is discretionary to the core and never awarded as of right. And the district court did not abuse its discretion in denying mandamus where petitioners failed to show that a reasonable observer would question the bankruptcy judge's impartiality.

The petition should be denied.

STATEMENT

A. Highland's bankruptcy; Dondero's obstruction

In October 2019, Highland—founded and then controlled by petitioner James Dondero—filed for bankruptcy in Delaware to stay the enforcement of a $180 million arbitral award. Pet. App. 2a. Shortly after filing, Highland subsidiaries were found liable for more than $1 billion, which was enforced against Highland. See *In re Highland Cap. Mgmt., L.P.*, 48 F.4th 419, 425 n.2 (5th Cir. 2022).

The Creditors Committee successfully moved to transfer venue from Delaware to the Northern District of Texas because Bankruptcy Judge Stacey Jernigan (a respondent here) had presided over earlier cases involving Dondero-controlled entities and was, therefore, "already intimately familiar with the Debtor's principals and complex organizational structure." Pet. App. 2a-3a. Those administratively

consolidated cases were commenced in 2018 by involuntary petitions filed after Dondero's entities fraudulently transferred assets, leaving the debtor and its general partner judgment proof and unable to satisfy yet another adverse arbitral award. See *In re Acis Cap. Mgmt., L.P.*, No. 18-30264 (Bankr. N.D. Tex. Jan. 30, 2018), and *In re Acis Cap. Mgmt., GP, LLC*, No. 18-30265 (Bankr. N.D. Tex. Jan. 30, 2018) (together, the "*Acis Cases*").

Dondero did not argue that the venue transfer was improper because Judge Jernigan was biased against him. Nor did he move for recusal when the case was docketed with Judge Jernigan. Nor did he move for recusal of Judge Jernigan in the *Acis Cases*.

Once the case was in Texas, the U.S. Trustee sought to appoint a trustee because of concerns that Dondero could not serve as an estate fiduciary. Pet. App. 53a-54a. To avoid the appointment of a trustee, Dondero voluntarily agreed to step down from all control positions at Highland and be replaced by an independent board of directors, including an unrelated investment professional who later became CEO of the debtor. *Ibid.* Judge Jernigan approved that agreement at the first hearing before her, in January 2020. Pet. App. 3a. Though Dondero claims (at 5) that Judge Jernigan "disclosed that she had a detailed and negative impression of Mr. Dondero" at this hearing, Dondero did not seek to recuse her then (nor is his accusation supported by the record). See Pet. App. 10a-11a.

Over the following months, Dondero took repeated actions to obstruct Highland's bankruptcy. As a result, consistent with the prior governance agreement, he was required by the independent board to resign from all remaining positions at Highland in October

2020. Pet. App. 55a. Around the same time, the Creditors Committee rejected Dondero's proposed reorganization plan that would have reinstalled him as CEO of an ongoing enterprise. Dondero responded by vowing to "burn the place down." Pet. App. 66a.

Dondero has made good on his threat. He interfered with the independent board's management of the estate and tried to intimidate Highland employees and officers, including threatening Highland's new CEO in writing, "Be careful what you do, last warning." *In re Highland Cap. Mgmt., L.P.*, No. 19-34054, 2021 WL 2326350, at *7 (Bankr. N.D. Tex. June 7, 2021). He has since objected to nearly every court order and commenced frivolous litigation against Highland and its independent management. Dondero and entities under his control have also wasted incalculable amounts of judicial resources by dozens of appeals of the bankruptcy court's and district court's orders. See Pet. (v)-(vii). The Fifth Circuit has rejected nearly all of Dondero's arguments.

Dondero's obstructionist tactics have earned him contempt and bad-faith findings. In *In re Highland Capital Management, L.P.*, 105 F.4th 830 (5th Cir. 2024), the Fifth Circuit upheld in its entirety a $450,000 contempt sanction, noting among other things that Dondero had given an "untruthful explanation" for his conduct. *Id.* at 838. In *In re Highland Capital Management, L.P.*, 98 F.4th 170 (5th Cir. 2024), the Fifth Circuit did not express any doubt that the conduct was contumacious, but vacated the sanction imposed because the Dondero-controlled entity's "*only* contumacious conduct was filing [a] Motion in the district court as opposed to the bankruptcy court"

and the court therefore thought the sanction excessive in a civil contempt proceeding. *Id.* at 175.

In yet another instance of wrongdoing, the district court upheld the bankruptcy court's sanction finding that Dondero acted in bad faith when an entity he controlled "filed and prosecuted its proof of claim in bad faith and willfully abused the judicial process" and "pursued its proof of claim at trial even though its representatives' trial testimony showed that there was no factual or legal basis for its request." *NexPoint Real Est. Partners, LLC* v. *Highland Cap. Mgmt., L.P.*, No. 24-cv-1479, 2025 WL 2697835, at *2 (N.D. Tex. Sept. 22, 2025).

Indeed, multiple federal judges have been highly critical of Dondero's conduct and legal positions. For example, District Judge Starr admonished Dondero-related parties for their "zeal to bamboozle" the court. *Dugaboy Inv. Tr.* v. *Highland Cap. Mgmt. LP*, No. 21-cv-1295, 2022 WL 4450490, at *5 (N.D. Tex. Sept. 22, 2022). The Fifth Circuit described objections by Dondero and entities he controlled to plan confirmation as a "blunderbuss." *In re Highland*, 48 F.4th at 432. And, in the opinion below, a separate Fifth Circuit panel agreed that there was "ample evidence" to support Judge Jernigan's use of the labels "transparently vexatious" and "litigious" to describe Dondero. Pet. App. 12a.

Despite Dondero's attempts to derail its reorganization, Highland (led by its independent board) negotiated a chapter 11 plan that won support from virtually all creditors. That plan was confirmed, over Dondero's objection, by the bankruptcy court in February 2021. Pet. App. 3a. The bankruptcy court described the plan, and its overwhelming creditor support, as

"nothing short of a miracle." *In re Highland*, No. 19-34054 (Bankr. N.D. Tex.), Dkt. No. 1943 at 16 (Feb. 22, 2021).

B. Recusal proceedings in bankruptcy court

A month *after* Judge Jernigan confirmed Highland's plan—and 15 months after Highland's case was transferred to Texas—Dondero devised a new strategy to undo the decisions against him. He began arguing that Judge Jernigan had been biased against him from the start and, therefore, the entire bankruptcy needed somehow to be unwound and started anew.

In March 2021, petitioners filed their first recusal motion, arguing bias based on Judge Jernigan's then-years-old rulings and statements in the *Acis Cases*. *In re Highland*, No. 19-34054 (Bankr. N.D. Tex.), Dkt. No. 2061 (Mar. 18, 2021). Despite actively participating in more than a year of contentious litigation, up to that point petitioners had never claimed that the *Acis Cases* somehow required Judge Jernigan to recuse herself. Petitioners raised recusal "after [Highland's] reorganization plan had been confirmed" and "on the eve of Dondero's contempt hearing." Pet. App. 4a-5a. The bankruptcy court denied the recusal motion as both untimely and unfounded. *Ibid*. Petitioners appealed to the district court. Judge Kinkeade dismissed their appeal as interlocutory, denied leave to appeal, and rejected petitioners' request for mandamus. *Id.* at 48a.

In July 2022, petitioners filed a second recusal motion. That motion repeated their arguments from the first motion and requested entry of a final, appealable order. Pet. App. 5a. The bankruptcy court, again, denied the motion. *Ibid.*

Petitioners filed a third recusal motion in September 2022. *In re Highland*, No. 19-34054 (Bankr. N.D. Tex.), Dkt. No. 3542 (Sept. 27, 2022). That motion was filed nearly three years after the bankruptcy was transferred to Judge Jernigan in December 2019, more than 18 months after Judge Jernigan confirmed Highland's chapter 11 plan, and one month after the Fifth Circuit affirmed that confirmation order. Pet. App. 5a-6a; *In re Highland*, 48 F.4th at 424 (initially decided Aug. 19, 2022).

The third recusal motion incorporated the entirety of petitioners' first motion by reference. Like the other motions, it said not one word about the novels. Only six months later—in March 2023—did petitioners file a "supplement" that, for the first time, leveled allegations based on two novels Judge Jernigan had authored. Pet. App. 6a, 86a. The first novel, *He Watches All My Paths*, was published in January 2019—almost a year before Highland's case was transferred to Texas—and a sequel, *Hedging Death*, was published in March 2022. Petitioners argued that the novels evidenced bias against Dondero because, according to them, one of the characters is based on Dondero and the novels included negative statements about the financial industry. Pet. App. 6a.

The bankruptcy court denied that third motion in a lengthy decision. It held, again, that the recusal motion was untimely. Pet. App. 61a. In addition, it explained that the motion was premised on "misstatements or partial descriptions of events during the case * * * that create misimpressions." Pet. App. 67a. The bankruptcy court also addressed the two novels, making clear that they are "entirely fiction" and that "there are no characters or entities in [Judge

Jernigan's] books that have been inspired by or modeled after" Dondero or his entities. Pet. App. 87a, 90a.

As Judge Jernigan explained, neither novel bore any resemblance to the Highland bankruptcy proceedings. The first novel, *He Watches All My Paths*, was "entirely about a federal judge who receives death threats" and the antagonist in that novel was "not a person in the hedge fund industry but, rather, a young, former tort victim who feels wronged by the American justice system." Pet. App. 87a. The character that petitioners claim was based on Dondero—Cade Graham—does not even appear in that first novel.

The second novel, *Hedging Death*, is about the bankruptcy of a biomedical research firm that received limited funding from the fictional Graham, whose funding was backstopped by a Mexican drug cartel. Pet. App. 87a-88a; see also Stacey Jernigan, *Hedging Death* (2022). Unlike Dondero, neither Graham nor his companies were parties to bankruptcy proceedings before the fictional judge. In addition, Graham "fake[d] his own death in Mexico * * * after linking up with Mexican drug cartels," was "a Dallas native, raised by an oil man, who graduated from Princeton," and "has a Brazilian girlfriend with whom he has a son, Ethan, with whom he engages in business." Pet. App. 87a-88a. Dondero has certainly never claimed to be or have done any of those things.[1]

---

[1] Graham's hedge fund is called Ranger Capital. Petitioners argued that is proof that the character is based on Dondero because Highland used the name Ranger Asset Management upon its inception and for fewer than 12 months more than 25 years ago in 1997 and 1998. But, as Judge Jernigan explained, that long-discarded name "was never mentioned in the bankruptcy

C. Mandamus proceedings in district court and appeal to the Fifth Circuit

1. Petitioners again filed a petition for writ of mandamus with Judge Kinkeade. Having already denied mandamus in his February 2022 order, Judge Kinkeade directed the clerk to "unfile" the petition. Pet. App. 41a.

Petitioners immediately filed a new petition for mandamus. The district court, this time via Judge Scholer, denied the petition. Judge Scholer reasoned that petitioners "failed to present any objective manifestations of bias or prejudice that would constitute grounds for Judge Jernigan's recusal." Pet. App. 39a-40a. As for the novels, Judge Scholer specifically rejected petitioners' arguments, explaining that comparisons between the books and Dondero were "far-reaching" and that petitioners "fail[ed] to show how any portion of the crime novels could raise a doubt in the mind of a reasonable observer as to Judge Jernigan's impartiality." Pet. App. 44a. Thus, petitioners' allegations were "wholly conclusory and baseless." *Ibid.* For the same reasons, the court concluded that petitioners failed to show that mandamus was appropriate under the circumstances. *Ibid.*

2. Petitioners appealed, and the Fifth Circuit affirmed in an unpublished opinion. It reviewed the district court's "denial of mandamus for abuse of

---

case," "not in the Highland disclosure statement," and not "in any of the numerous organizational charts that were presented to her in the last three years." Pet. App. 88a. Judge Jernigan said that she had "never once" heard that Highland was ever known as Ranger Asset Management. *Ibid.* Ranger is a term widely used in Texas, for everything from lawmen to a Major League Baseball team.

discretion." Pet. App. 7a. And it concluded that the district court did not abuse its discretion in denying mandamus because petitioners did not show that their right to mandamus was clear and indisputable. Pet. App. 8a, 17a.

The court of appeals reviewed the evidence that the district court had before it (which did not include the novels themselves) and agreed that "there is ample evidence in the record" to support the bankruptcy judge's characterization of petitioners here as "'transparently vexatious' and litigious." Pet. App. 12a. The Fifth Circuit went through petitioners' allegations, point-by-point, and concluded that *none* was sufficient to "show bias so clear and indisputable as to warrant mandamus" and that, over and over, petitioners "largely mischaracterize[d]" facts. Pet. App. 9a-17a.

With respect to Judge Jernigan's two novels, the Fifth Circuit concluded that the supposed parallels raised by petitioners were insufficient for mandamus. Pet. App. 16a. The court noted that "the novels are fiction" and are "largely about other topics." *Ibid.* "*He Watches All My Paths* is about a federal judge who receives death threats from a young, former tort victim." *Ibid.* "*Hedging Death*, though it involves a bankruptcy case and a firm that received funding from a hedge fund manager, is largely about the protagonist bankruptcy court judge." Pet. App. 16a-17a. And Cade Graham, the character supposedly based on Dondero, was "far from the real-life James Dondero." Pet. App. 17a.

The Fifth Circuit stressed that "[t]he texts of the novels are not in the record before us." Pet. App. 16a. Based on the limited "information [the court] ha[d] in the record," it noted that the novels might "raise cause for concern." Pet. App. 17a. But because those issues

were, at best, "debatable," the court of appeals concluded that "the similarities are not close enough to find that *the district court abused its discretion denying the petition*." *Ibid.* (emphasis added).

REASONS FOR DENYING THE PETITION

The unpublished decision of the court of appeals is correct and does not conflict with any decision of this Court or another court of appeals. This Court should deny certiorari.

This case does not actually raise either of the questions presented in the petition. And it is an unsuitable vehicle because, among other things, the text of the novels is not even in the record. Nor is there a conflict worthy of this Court's review. The Seventh Circuit is already in the process of correcting its outlier position on the first issue, and the second issue does not exist because no circuit applies the "double-deference" standard described in the petition. Finally, the Fifth Circuit's decision is correct.

I. This case does not raise the questions presented and is a poor vehicle

1. The questions presented by the petition are not at issue in this case.

Petitioners' first question asks whether a judge's decision declining to recuse herself should be reviewed for abuse of discretion or *de novo*. The central premise of their petition is that the Fifth Circuit analyzed whether the "bankruptcy judge abused her discretion by denying recusal." Pet. (i); see also, *e.g.*, Pet. 29 (arguing that issue is whether appellate courts should defer to the "very judge whose impartiality is questioned").

But neither the district court nor the Fifth Circuit here reviewed the bankruptcy judge's recusal denial for abuse of discretion. The district court simply answered the only question presented: whether petitioners were entitled to mandamus relief. It concluded (correctly) that they had not shown a clear and indisputable right to relief—the settled standard for mandamus—without ever considering whether Judge Jernigan had abused her discretion in denying the recusal motion. Pet. App. 41a-44a. The Fifth Circuit then considered whether the "*district court* abused its discretion by denying the petition." Pet. App. 17a (emphasis added). In other words, none of the judges below reviewed *Judge Jernigan's* recusal order for abuse of discretion.

The petition distorts the Fifth Circuit's opinion to make it appear as if that court deferred to the bankruptcy court's decision. For example, the petition says (at 13) that the Fifth Circuit held that certain similarities in the novels "were not 'close enough' to show an 'abuse of discretion' in *declining recusal*." (emphasis added) (quoting Pet. App. 37a). But petitioners selectively quote the opinion: The Fifth Circuit actually held that those similarities were "not close enough to find that the *district court abused its discretion denying the petition*." Pet. App. 17a (emphasis added) (revised opinion). Likewise, petitioners refer to the Fifth Circuit as having "restricted review of a recusal decision to abuse of discretion." Pet. 27. But, once again, the Fifth Circuit did not review the recusal order—it made clear that it was reviewing the district court's "denial of mandamus for abuse of discretion." Pet. App. 7a; see also, *e.g.*, *id.* at 12a, 16a-18a. The Fifth Circuit could not have been clearer that it was reviewing the

district court's denial of mandamus, not Judge Jernigan's recusal order.

Petitioners' second question suffers a similar flaw. According to petitioners, the Fifth Circuit applied two layers of deference, requiring Dondero to show both that the decision not to recuse was "an abuse of discretion and that the abuse was 'clear and indisputable.'" Pet. (ii). Not so.

The Fifth Circuit applied only one standard of review. It asked if the *district court* abused its discretion in denying mandamus. See Pet. App. 7a. In evaluating the district court's work, it considered whether *petitioners* had met their burden to show that their "right to issuance of the writ is clear and indisputable." Pet. App. 7a. That is entirely consistent with traditional abuse-of-discretion review, because the "clear and indisputable" showing is a "mandamus prerequisite[]," Pet. 24, and a district court cannot abuse its discretion in denying a writ that it could not issue in the first place.

Contrary to petitioners' claims, nothing in the Fifth Circuit's opinion imposes an additional requirement that the *abuse of discretion* be clearly and indisputably erroneous. The court of appeals had no reason even to reach that question. Because it concluded that there was no abuse of discretion, it never had cause to consider whether that hypothetical abuse graduated from ordinary abuse to "clear and indisputable" abuse. So the issue raised by petitioners' second question presented is also entirely absent from the Fifth Circuit's decision.

2. This case also suffers from at least three additional vehicle problems.

First, as the Fifth Circuit acknowledged, the novels are not in the record. Pet. App. 16a. That alone makes this case a poor vehicle. Perhaps recognizing that problem, petitioners tried to introduce the mischaracterized books with their petition. Pet. App. 92a-144a. But nothing in this Court's precedents or rules permits a party to reopen the record at the cert. stage. See, *e.g.*, Stephen M. Shapiro et al., *Supreme Court Practice* § 13.11(k), at 13-34 to 13-35 (11th ed. 2019) ("The Court has consistently condemned" efforts to submit "additional evidence that is not part of the certified record.").

Second, petitioners' recusal motions were untimely, as the bankruptcy court held. Pet. App. 61a. Petitioners have claimed that Judge Jernigan's bias was evident even before the Highland case was assigned to her in December 2019 based on the *Acis Cases* from 2018 and on *He Watches All My Paths*, which was published in January 2019. Yet petitioners did not raise *any* recusal issues until March 2021 and did not assert the novels as a basis for recusal until *March 2023* in their supplement to the third recusal motion. Pet. App. 47a, 86a.

By that time, much of the core bankruptcy work was already done. Creditors had negotiated a chapter 11 plan, the bankruptcy court confirmed that plan in February 2021, that plan became effective in August 2021, and the Fifth Circuit affirmed that confirmation order, with modifications, in August 2022. And the bankruptcy court, district court, and Fifth Circuit had already heard and resolved dozens of petitioners' meritless objections and appeals. See Pet. (v)-(vii).

"[T]he judicial process can hardly tolerate the practice of a litigant with knowledge of circumstances suggesting possible bias or prejudice holding back, while calling upon the court for hopefully favorable rulings, and then seeking recusal when they are not forthcoming." *In re Kensington Int'l Ltd.*, 368 F.3d 289, 316 (3d Cir. 2004). Yet that is precisely what petitioners have done here.

Petitioners have now filed five motions for recusal. The fifth, which repeated the same allegations of supposed bias, was denied by the bankruptcy court in September 2025. *In re Highland*, No. 19-34054 (Bankr. N.D. Tex.), Dkt. No. 4379 (Sept. 2, 2025). In that motion, petitioners asked the court to "vacate *all* of its orders and decisions in this case" and threatened that they would raise the recusal issue again on direct appeal at some unspecified future time. *Ibid.*, Dkt. No. 4372 at 2, 6 (Aug. 15, 2025) (emphasis added). True to form, petitioners appealed but the district court rejected the appeal, *sua sponte*, because the order is interlocutory, requiring leave of court to appeal. No. 25-cv-02579 (N.D. Tex.), Dkt. No. 2 (Sept. 26, 2025).[2]

Third, petitioners do not come to this Court with clean hands. Even in the recusal context, the writ of mandamus is "equitable in nature" and "it should not 'be granted in aid of those who do not come into court with clean hands.'" *In re Cargill, Inc.*, 66 F.3d 1256, 1262 (1st Cir. 1995) (quoting *United States ex rel. Turner* v. *Fisher*, 222 U.S. 204, 209 (1911)). It is no

---

[2] Petitioners subsequently moved for leave to appeal the order denying their fifth recusal motion; the motion is fully briefed and *sub judice.*

secret that a disqualification motion can be a procedural weapon to harass opponents and delay proceedings. *United States* v. *Microsoft Corp.*, 253 F.3d 34, 108 (D.C. Cir. 2001) (en banc) (per curiam). And harassment barely begins to describe petitioners' conduct in this litigation.

Dondero and his entities have engaged in contumacious and bad-faith conduct at least three times. See p. 5, *supra*. He has for nearly five years tried to obstruct Highland's reorganization efforts, wasting tens of millions of dollars in estate funds. His numerous objections were "not made in good faith." *In re Highland Cap. Mgmt., L.P.*, 57 F.4th 494, 498 (5th Cir. 2023). He has threatened Highland employees and vowed to "burn the place down" when he didn't get his way in the bankruptcy. Pet. App. 66a. He has tried to "bamboozle" more than one court. See pp. 5-6, *supra*. As the Fifth Circuit correctly observed below, there is "ample evidence" that Dondero has been "transparently vexatious" during Highland's bankruptcy case. Pet. App. 12a.

Petitioners' bad behavior has continued before this Court. They are trying to smuggle the novels into the record, even though petitioners did not introduce them below. They failed to serve Judge Jernigan or the Solicitor General when they filed a petition to which Judge Jernigan is a respondent—in contravention of this Court's rules. See Sup. Ct. R. 29(4)(a). And they appear to have cobbled together a group of Dondero's former employees to submit an amicus brief using the moniker "investment professionals concerned with judicial impartiality" in an embarrassingly obvious attempt to trick the Court into believing that there is legitimate investment-

industry support for their position. It is telling that the amicus brief neither names those purportedly "concerned" professionals nor discloses how many of them there are.

The petition, moreover, is replete with factual assertions that are false and either are accompanied by no citation, accompanied by a citation that simply doesn't support them, or based on quotations taken badly out of context. See pp. 27-33, *infra*.

The judiciary need not tolerate such disregard and abuse from litigants. Petitioners and their amici make noise about this case supposedly implicating the integrity of the judicial system, but rewarding Dondero's behavior and utter disregard for the judicial system would be, by far, a greater threat to the perception of the judicial system.

II. There is no circuit conflict that warrants this Court's attention

Even if the questions presented in the petition were raised in this case, certiorari should still be denied because the supposed circuit conflicts do not warrant this Court's review.

1. Petitioners principally rest on a claimed 12-1 circuit split concerning the standard of review that courts of appeals should use when evaluating a district judge's decision declining recusal. They assert that the Seventh Circuit reviews recusal denials *de novo*, while every other circuit reviews such orders for abuse of discretion.

This Court has recently denied petitions raising that same split. See *Fustolo* v. *The Patriot Group, LLC, et al.*, No. 23-281; *Lechuga* v. *United States*, No. 20-745; *Kadamovas* v. *United States*, No. 18-7489;

Mikhel v. *United States*, No. 18-7835; *Moore* v. *Publicis Groupe SA, et al.*, No. 13-51. And there's no reason to grant review of this question now.

As an initial matter, the Seventh Circuit has, at times, stated that it "review[s] a district court judge's decision not to recuse himself for abuse of discretion," *United States* v. *Franklin*, 197 F.3d 266, 269 (1999), and it recently applied that standard in affirming a district court's decision not to recuse under Section 455(a), *Whitlow* v. *Bradley Univ.*, 722 F. App'x 592, 593 (7th Cir. 2018). See also *Tezak* v. *United States*, 256 F.3d 702, 716 (7th Cir. 2001) ("A district court judge's decision not to recuse himself is reviewed under an abuse of discretion standard.").

To be sure, the Seventh Circuit has also applied *de novo* review in some cases. But, even in those cases, it has recognized that "mandamus is an extraordinary remedy we do not grant lightly." *In re Hatcher*, 150 F.3d 631, 637 (7th Cir. 1998).

Moreover, the Seventh Circuit has recognized that its *de novo* approach is both an outlier and something of a historical accident. Its use of *de novo* review "grew out of" its 1985 decision in *United States* v. *Balistrieri*, 779 F.2d 1191 (7th Cir. 1985), which held that orders denying recusal "could be reviewed *only* by mandamus petition." *In re Gibson*, 950 F.3d 919, 923 (7th Cir. 2019). That no-direct-appeal rule had a "side-effect on the standard of review for mandamus" in recusal cases. *Id.* at 922. Because it "foreclose[d] appellate review at the conclusion of the case," the Seventh Circuit adopted an "unusually relaxed mandamus standard" in these recusal cases. *Id.* at 923. It treated those petitions more like ordinary appeals. But the Seventh Circuit overruled *Balistrieri* in 2016. See

Fowler v. *Butts*, 829 F.3d 788, 793 (7th Cir. 2016). And the court has since acknowledged that *Fowler* "tends to undermine the logic of [the Seventh Circuit's] application of a *de novo* standard of review for this type of mandamus petition." *Gibson*, 950 F.3d at 923.[3]

The Seventh Circuit's 2022 decision in *United States* v. *Walsh* likewise shows that court is moving away from *de novo* review. 47 F.4th 491 (2022). In that case, the court of appeals held that it would review a district court's factual findings in the recusal context using "the deferential clear-error standard." *Id.* at 498-499. It rested its holding in part on the rationale that adopting that standard "*brings us closer to the approach used by our sister circuits* in this context." *Ibid.* (emphasis added).

Because the Seventh Circuit is already taking steps to align itself with all other circuits, there is no need for this Court to review the ephemeral conflict. In any event, should the Court be interested in this issue, it should wait for a suitable vehicle that presents the question whether a court of appeals should defer to a judge's evaluation of her own impartiality. As explained above, this is not that case: The court of appeals did not defer to (or even review) the decision of the judge who received the recusal motions.

2. Petitioners' second claimed split is entirely imagined. They say that the Fifth Circuit imposed a

---

[3] *Gibson* found it unnecessary to resolve that intra-circuit tension, because it determined that its "decision would be the same whether we applied the *de novo* standard or the more 'clear and indisputable right' standard" that dominates mandamus jurisprudence. *Id.* at 924.

"double dose of deference," which required petitioners to "make a 'clear and indisputable' showing that the bankruptcy judge had abused her discretion in denying the recusal motion." Pet. 24. As discussed above, every part of that claim is wrong—the Fifth Circuit considered whether the district court abused its discretion in denying mandamus. It did not review the bankruptcy court's order at all. And there isn't a split because *no* circuit uses petitioners' imagined double-deference standard.

The cases petitioners cite as allegedly standing for a double-deference regime simply stand for the proposition that mandamus is a high bar, even for questions of recusal. And none of those cases concerns, as here, a court of appeals reviewing a district court's denial of mandamus.

Petitioners assert (at 24) that the Fourth and Ninth Circuits "lay[] the mandamus standard on top of abuse-of-discretion review to establish an even more deferential regime than what would govern on direct appeal." The cases they cite do no such thing. Rather, in each case, the court of appeals was considering a mandamus petition *in the first instance*, not reviewing whether a district court abused its discretion in denying mandamus.

The Fourth Circuit's decision in *In re Moore*, 955 F.3d 384 (2020), is a straightforward application of this Court's mandamus precedents. After a district judge denied a recusal motion, Moore sought mandamus from the Fourth Circuit. That court made clear that it was *not* applying the "abuse-of-discretion standard" for direct appeals. *Id.* at 388. Instead, it asked whether Moore had shown a "'clear and indisputable' right to * * * relief," which this Court

has held is a requirement for the writ to issue. *Ibid.* (quoting *Cheney* v. *U.S. Dist. Ct.*, 542 U.S. 367, 380-381 (2004)). Because the basis of Moore's recusal petition was entirely "hypothetical and speculative," the court denied relief. *Id.* at 390. Nothing in that unremarkable case purports to apply the "double-deference approach," as petitioners now claim. Pet. 25.

The Ninth Circuit's decision in *In re Creech*, 119 F.4th 1114 (2024), does not support petitioners' claimed split either. Like in *Moore*, the defendant in *Creech* sought mandamus, after the district court denied his motion to recuse based on the judge's friendship with one of the prosecutors. The Ninth Circuit applied its typical five-factor test for mandamus. *Id.* at 1120. One of those factors is whether the district court's order is "clearly erroneous as a matter of law," which can include a "clear abuse of discretion." *Id.* at 1121. The Ninth Circuit closely scrutinized the factual record and concluded that the personal relationship did require recusal, even though the district court had insisted it did not. See *id.* at 1122-1124. Nothing in the opinion suggests that it deferred to the district judge's view—it never even uses the word "deference"—and it certainly did not apply a "double dose." Indeed, it is passing strange that petitioners should rely on a case in which the court of appeals *granted mandamus to compel recusal* in support of their claim that courts of appeals are being too deferential in this context.

The Third Circuit cases petitioners cite (at 25) don't implicate their double-deference issue either. In each, the court of appeals considered a mandamus petition after the district court had declined to recuse.

See *Kensington*, 368 F.3d at 293-294; *Alexander* v. *Primerica Holdings, Inc.*, 10 F.3d 155, 162 (3d Cir. 1993) (same); *In re Sch. Asbestos Litig.*, 977 F.2d 764, 769 (3d Cir. 1992), as amended (Oct. 23, 1992). And none of those cases insulated the underlying recusal decision with multiple layers of deference. To the contrary, the Third Circuit—in, again, *granting* a writ of mandamus to compel recusal—made clear that such cases "must be reviewed for an abuse of discretion," though it stressed that a judge's discretion under § 455(a) is limited to determining whether the facts justify recusal. *Kensington*, 368 F.3d at 301 & n.12. It never suggested that the court had stacked on some additional level of deference.[4]

At bottom, this split does not exist, so the petition's second question does not warrant this Court's review either.

III. The decision below is correct

The Fifth Circuit held that the district court did not abuse its discretion by denying mandamus relief. Pet. App. 17a. That decision is both correct and unremarkable.

---

[4] Although the Third Circuit applied abuse-of-discretion review, it noted that the traditional standard for mandamus would likely lead to the "same result," because any case where there is a "clear and indisputable" need for mandamus will—almost by definition—also "'have been an abuse of discretion or a clear legal error.'" *Kensington*, 368 F.3d at 301 (quoting *Alexander*, 10 F.3d at 163 n.9). That is not evidence that the Third Circuit stacked the two standards on top of each other—rather, it merely reflects the court's belief that it would reach the same bottom-line conclusion under either. And, again, in *Kensington*, the conclusion was that mandamus to compel recusal *was* warranted.

1. The court of appeals correctly reviewed the district court's denial of mandamus for abuse of discretion. This Court has made clear that "decisions on 'matters of discretion' are 'reviewable for abuse of discretion.'" *Highmark Inc.* v. *Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 563 (2014) (quoting *Pierce* v. *Underwood*, 487 U.S. 552, 558 (1988)). And, when it comes to mandamus, the Court has been unequivocal that the "issuance of the writ is in large part a matter of discretion with the court to which the petition is addressed." *Kerr* v. *U.S. Dist. Ct.*, 426 U.S. 394, 403 (1976). Even when the "prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances." *Cheney*, 542 U.S. at 381. That is because "[m]andamus is an extraordinary remedial process which is awarded, not as a matter of right, but in the exercise of a sound judicial discretion." *Duncan Townsite Co.* v. *Lane*, 245 U.S. 308, 311 (1917). In short, "[t]he writ is always discretionary." *In re Paxton*, 60 F.4th 252, 259-260 (5th Cir. 2023).

Petitioners argue that the Fifth Circuit applied the wrong standard because "recusal *is not discretionary*." Pet. 27. Focusing on the text of § 455(a), they argue that "Congress used mandatory language and removed discretion from the courts" when it comes to recusal decisions. Pet. 28. But that argument, once again, misstates what the Fifth Circuit did. The text of § 455(a) has no bearing on the correct standard of review here, because the Fifth Circuit did not review Judge Jernigan's order denying recusal under § 455(a) or suggest that Judge Jernigan had discretion over whether to recuse. Instead, it reviewed the *district court's* order denying mandamus, and it is beyond dispute that the district court had discretion over

whether to issue mandamus, which is never issued as of right.

Petitioners and amici make additional similarly flawed arguments. Petitioners invoke the venerable maxim that "no man is allowed to be a judge in his own cause." Pet. 29. They argue that it is "crucial" that a judge other than the one seeking to be recused consider whether recusal is needed. Pet. 31. But they ignore the fact that here the district court scrutinized the facts and determined that no relief was warranted. And the Fifth Circuit did the same. See Pet. App. 9a-18a. Amicus New Civil Liberties Alliance bases its entire brief on the mistaken belief that the Fifth Circuit was reviewing the decision of a "non-Article III bankruptcy tribunal," NCLA Br. 3, even though the Fifth Circuit's opinion states on its face that it is reviewing the district court's order. *E.g.*, Pet. App. 2a, 17a-18a.

2. The Fifth Circuit also correctly found that there was no abuse of discretion in denying mandamus here.

The district court applied the established "three requirements" for mandamus. Pet. App. 41a-42a. It held that petitioners had not made the required showing on the second requirement—a "clear and indisputable right" to mandamus—because they "ha[d] not shown that recusal was warranted." Pet. App. 42a-43a. It rejected petitioners' claim that Judge Jernigan displayed bias "based on rulings and statements" that she made during the bankruptcy. Pet. App. 43a. It concluded that petitioners had "create[d] misimpressions" by plucking statements out of their "appropriate context" and, moreover, that they came nowhere close to satisfying the demanding

showing needed to recuse based on "events in court." Pet. App. 43a-44a. And the district court rejected petitioners' arguments based on the "two *fiction* novels," which it correctly described as "far-reaching comparison[s] between the books and the parties to the Bankruptcy Case." Pet. App. 44a. It also held that petitioners failed to show "the third requirement," that mandamus be "appropriate under the circumstances," because their "allegations are wholly conclusory and baseless." *Ibid.*

Finding no abuse of discretion by the district court, the Fifth Circuit affirmed. That decision is plainly correct.

Start with the laundry list of rulings and statements from the bankruptcy court proceedings. The Fifth Circuit undertook an exhaustive review of each of those statements. Pet. App. 9a-16a. After placing each in its "proper context," the court of appeals agreed with the district court that none justified recusal. Pet. App. 9a. And rightly so. Judicial rulings "almost never constitute a valid basis" for recusal. *Liteky* v. *United States*, 510 U.S. 540, 555 (1994). And "judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases ordinarily do not support" recusal either. *Ibid.*

The court of appeals likewise found that the novels did not justify mandamus. Petitioners' mischaracterization of portions of the novels gave it pause, particularly since the Fifth Circuit's review was handicapped because the "texts of the novels are not in the record." Pet. App. 16a. But it concluded that the three supposed "parallels cited by [petitioners]" were "insufficient." *Ibid.* It stressed that the novels

"are fiction," that they "are largely about other topics," and that even the character that Dondero claimed was modeled on him was "far from the real-life James Dondero." Pet. App. 16a-17a.

Based on the limited "information [that the court] ha[d] in the record," the Fifth Circuit found that those claims were, at best, "debatable." Pet. App. 17a. Because mandamus will not issue for claims that are "to any degree debatable," the court of appeals concluded that the district court "didn't abuse its discretion in finding that the Dondero Parties lack a clear and indisputable right to mandamus relief." Pet. App. 17a-18a. That is a straightforward application of this Court's mandamus precedents—indeed, even petitioners concede that it has "long been established that mandamus will issue *only* when the petitioner shows that his entitlement to the writ is 'clear and indisputable.'" Pet. 24 (quoting *Cheney*, 542 U.S. at 381) (emphasis added).

Moreover, the Fifth Circuit would have reached the same result regardless of the standard of review. It could not undertake true *de novo* review because it did not have the text of the novels in the record (which, again, is one of many reasons this case is a poor vehicle for petitioners' questions). But, had it been able to consider the full context of the novels—as it did with petitioners' other claims of bias—the court of appeals would have concluded that they provide no basis for recusal either. Indeed, petitioners' characterization of those novels is as much a work of fiction as the books themselves. The petition contains innumerable statements that misrepresent the novels or are outright false.

These misstatements start right from the beginning on page (i). Petitioners claim that, "[w]hile presiding over Highland's bankruptcy case, the bankruptcy judge wrote and published two novels." Pet. (i); see also Pet. 6 (claiming that Judge Jernigan "published two novels" "[d]uring the bankruptcy proceedings"). That is flat wrong. The first book, *He Watches All My Paths*, was published in January 2019—more than ten months *before* Highland's bankruptcy case was transferred to Judge Jernigan in December 2019.

The petition also selectively quotes the novel's introductory note to claim that Judge Jernigan "admits that some of the characters and events 'are based loosely on actual persons and events.'" Pet. 11 (quoting Pet. App. 94a (author's note to *Paths*)). But the same paragraph emphatically states that "the human characters in this novel are *absolutely fictional*." Pet. App. 94a (emphasis added). *Hedging Death* repeats that language verbatim. *Hedging Death*, Author's Note. In both notes, Judge Jernigan further stated that "one should not assume that any statement or opinion expressed or implied by any characters in this novel are necessarily mine or are somehow a reflection on how I might rule on any particular issue in any case in the future." *Ibid.*; Pet. App. 94a.

The petition goes on to mischaracterize both novels at length. For instance, it claims (at (i)) that the "two novels * * * pit a heroic bankruptcy judge against a nefarious hedge-fund manager bearing striking similarities to Mr. Dondero." And the petition claims (at 7-9) that "[t]he villain of the books is Cade Graham, and his hedge fund is Ranger Capital" and

that the "plot of the books involves Judge Lassiter's battle to bring Ranger Capital and its manager to heel and stop all manner of their financial perfidy." Wrong again. *He Watches All My Paths* is "about a federal judge who receives death threats from a young, former tort victim." Pet. App. 16a; Pet. App. 87a. The fictional hedge-fund manager (Cade Graham) never appears in that book, so he certainly wasn't the villain, and the plot didn't involve him.

The petition is wrong about the plot of *Hedging Death* too. Cade Graham is at best a secondary character in that book, not the main villain, and the fictional judge does not "battle" with him or his hedge fund.[5] Graham and the judge never meet or communicate, neither he nor his hedge fund appears before the judge, and the judge never takes any action against him or his hedge fund. (Indeed, when the fictional judge becomes aware of extrajudicial information about Graham—whom her private-investigator husband is separately investigating in Mexico—the judge *recuses* herself from the bankruptcy cases of the entities that Graham partially funded. *Hedging Death* at 252-256.)

The petition also tries to make hay out of trivial similarities. It claims (at 7) that the similarities

---

[5] The actual villain in *Hedging Death* is a terrorist and dark-web operator who goes by the pseudonym "Enos" and has close ties with a Mexican drug cartel. The plot of the book involves the discovery of Enos's sinister plot to murder and use elderly retirees in clinical trials without their knowledge and its unexpected connection to an incognito bio-research firm owned by the same scientist who owns a separate firm in bankruptcy proceedings before Judge Lassiter. To pursue his scheme, Enos blackmailed the hedge fund manager Graham into letting him experiment on retirees at a Mexican retirement community Graham owned.

between Graham and Dondero are "endless" but then proceeds to cite only a handful of similarities: rough age and appearance, general career trajectory, and current occupation. Pet. 7-8. Those are all generic. To say that the novel's description of Graham as "fifty-something" and "tall" is somehow obvious proof that Dondero was the inspiration for Graham is absurd. Pet. 8 (quoting Pet. App. 117a, 133a). And, if Dondero "weathered the capital markets crash of 2008 quite well" (which appears not to be true) and has been involved in "litigation with some major players in the credit default swap industry," he is far from the only person about whom such generalities are true. *Ibid.* (quoting Pet. App. 133a, 139a).

The cherry-picked similarities are also disingenuous. For instance, the petition cites (at 8) as a damning similarity the fact that Dondero and Graham have the same hair color (silver—hardly a unique hair color for a man in his fifties or sixties). But the book goes on to describe Graham's silver hair as "slicked back, collar-length" (Pet. App. 117a), which is a far cry from Dondero's short-cropped hair. See https://perma.cc/3WGJ-JM8A.

It's also telling what petitioners leave out. Graham is a misogynistic pedophile who wears only black turtlenecks. See, *e.g.*, *Hedging Death* at 15, 116, 121; see also, *e.g.*, https://perma.cc/3WGJ-JM8A (depicting Dondero in a jacket—not a black turtleneck). The fictional Graham could just as easily be based on Jeffrey Epstein or Steve Jobs or Bernie Madoff or Samuel Israel (a fifty-something hedge-fund manager with silver hair who ran a Ponzi scheme and faked his own death) or any other specific or general amalgamation of famous (or infamous)

middle-aged men in the business world. Moreover, Graham is blackmailed into allowing Enos to murder seniors living at his retirement facility in Mexico so that Graham—and two Mexican cartels—can profit off of their life insurance policies. And then Graham fakes his own death. None of that maps onto Dondero's life, and it's far from "a little literary license" differentiating Dondero from Graham. Pet. 33. If Dondero sees himself so clearly in Graham, that says more about him than it does about Judge Jernigan.[6]

Nor is Graham's fictional hedge fund a thinly veiled clone of Highland. As Judge Jernigan explained, she had never heard that Highland used the name Ranger Asset Management upon its inception for less than a year more than two decades ago, before permanently changing its name to Highland as it was known for decades. She did not

---

[6] There are *many* other differences between Graham and Dondero. The fictional Graham is a Dallas native who went to Princeton (like his father and oil wildcatter grandfather); got an MBA from Wharton; worked at Bear Stearns; and then bought a mansion in Dallas "with a sixteen-car garage full of Lamborghinis, Ferraris, McLarens, and Aston Martins," a villa in Lake Como, an apartment in Paris, and a French country home with a moat where he likes to hunt boar. *Hedging Death* at 98-99. Graham also has underage girlfriends across the world and at least a couple of illegitimate children. None of that is true for Dondero, who was born in New Jersey and got his undergraduate degree from the University of Virginia's McIntire School of Commerce. See https://perma.cc/3WGJ-JM8A. He does not have an MBA, did not work at Bear Stearns, and, so far as we know, does not have a vast foreign real estate empire, a fleet of sportscars, or the multiple underage girlfriends and illegitimate children that Graham does.

base Graham's fictional Ranger Capital on Highland. See, *e.g.*, Pet. App. 88a.

Hedging Death describes Ranger's "'byzantine' international tax structures and offshore transactions" in places like the Cayman Islands. Pet. 9. Petitioners point to Judge Jernigan's use of the word "byzantine" to "describe Highland's and Mr. Dondero's use of those same jurisdictions and international tax structures" as evidence that the fictional Ranger Capital must be a stand-in for Highland. Nonsense. *Ibid.* Those "similarities" are shared by nearly every hedge fund that has ever existed (or been dreamt up). Almost all hedge funds have complex international tax structures.[7] And the Cayman Islands is a—if not the—leading jurisdiction for private investment funds. See, *e.g.*, *In re Picard,* 917 F.3d 85, 92-93 (2d Cir. 2019) (discussing entities in Cayman Islands and British Virgin Islands that were "feeder funds" to Bernie Madoff's enterprise), cert. denied 140 S. Ct. 2824 (2020). There is no basis to conclude that Judge Jernigan lifted those details from Highland. Adopting widely shared details for a fictional thriller cannot be a basis for recusal.[8]

Nor should any of the comments about hedge funds and the financial industry generally be cause for recusal. For one, the petition's "derisive" quotes

---

[7] Indeed, the website for petitioners' counsel advertises that they have deep experience "structuring complex domestic and international structures" for private investment funds. Hunton, *Private Investment Funds*, https://perma.cc/CDE2-RSZF (last visited Nov. 7, 2025).

[8] *Hedging Death* also discusses other international jurisdictions (Isle of Man, Malta, the Cook Islands, etc.) that have never been used by Highland.

about the hedge fund industry (at 9-10) are from *Paths*, so they aren't about Graham or his Ranger Capital, who aren't in *Paths*. See also Pet. 32. For another, it's implausible that a reasonable observer would think that these quotes give rise to a concern that Judge Jernigan is unfairly prejudiced against Dondero or the investment fund industry in proceedings where the opposing party *is* a hedge fund itself and currently run by a hedge fund manager. See https://commission.abi.org/james-p-seery-jr. And, as noted above, both novels open with an author's note making it clear that the characters are fictional and that any opinions in the books are not Judge Jernigan's and do not reflect on how she might rule on anything.[9]

In short, petitioners have wildly mischaracterized Judge Jernigan's novels in their certiorari petition, consistent with their practice of trying to "bamboozle" the courts. In reality, the books are crime novels with highly sensational facts that would not give any reasonable person serious doubt about Judge Jernigan's impartiality. The Court should see this for what it is—a Hail Mary attempt to unwind the entire bankruptcy because Dondero did not like the outcome.

---

[9] The petition also criticizes (at 32) *Hedging Death* for describing the life settlement industry that Ranger Capital and Highland invested in as "creepy." But on the same pages, the book describes the industry as a "win-win" because the insured person and the policy purchaser both end up with more cash than they otherwise would have. *Hedging Death* at 72-73. Moreover, Judge Jernigan's inspiration for a plot involving the life settlement industry could have come from the 2015 chapter 11 proceedings before a different judge in the Northern District of Texas for Life Partners, a company that extensively invested in the life settlement industry.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

JEFFREY N. POMERANTZ
JOHN A. MORRIS
GREGORY V. DEMO
JORDAN A. KROOP
HAYLEY R. WINOGRAD
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd. 13th Fl.
Los Angeles, CA 90067

ROY T. ENGLERT, JR.
Counsel of Record
BRANDON L. ARNOLD
PAUL BRZYSKI
SHIKHA GARG
HERBERT SMITH FREEHILLS KRAMER (US) LLP
2000 K Street NW, 4th Fl.
Washington, DC 20006
(202) 775-4500
roy.englert@hsfkramer.com

NOVEMBER 2025